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California Legislature

2001–02 Regular Session
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CHAPTER 985

An act to add Article 4 (commencing with Section 6930) to Chapter 8 of Part 1 of Division 6 of the Fish and Game Code, relating to fish.

[Approved by Governor September 27, 2002. Filed with Secretary of State September 27, 2002.]

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

SECTION 1. Article 4 (commencing with Section 6930) is added to Chapter 8 of Part 1 of Division 6 of the Fish and Game Code, to read:

Article 4. Effect of Reduced Water Flows

6930. (a) Subject to the availability of funds for the purposes of this section, the department shall contract with the University of California to conduct a study of the effects that reduced waterflows at the mouths and upstream estuaries of rivers selected under subdivision (b) would have on existing salmon and steelhead populations and on existing or prospective salmon and steelhead population restoration or reintroduction programs.

(b) The department shall select the rivers to be included in the study and shall limit its selection to rivers that are within the combined river systems described in paragraph (7) of subdivision (a) of Section 1215.5 of the Water Code, and that are the subject of an application that has been filed with the State Water Resources Control Board to appropriate water in an amount equal to more than three cubic feet per second or more than 500 acre feet per annum of storage.

(c) The findings of the study conducted under this section shall be a factor in any decision of the State Water Resources Control Board to approve or deny an application to appropriate water from any river selected under this section. If the application involves the delivery of water, by means other than a pipeline or aqueduct, to any place of use that is outside of the protected area described in paragraph (7) of subdivision (a) of Section 1215.5 of the Water Code, the board may not approve that application until after the study has been completed.

(d) Any study conducted pursuant to this section shall conclude within five years of the start of that study.

(e) This section applies to the University of California only if the Regents of the University of California, by resolution, make it applicable to the university.

CHAPTER 986

An act to amend and repeal Section 9250.19 of the Vehicle Code, relating to vehicle registration fees, and making an appropriation therefor.

[Approved by Governor September 27, 2002. Filed with Secretary of State September 27, 2002.]

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

SECTION 1. Section 9250.19 of the Vehicle Code 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) Every county that has authorized the collection of the fee pursuant to subdivision (a) shall issue a fiscal yearend report to the Controller on or before November 1 of each year, summarizing all of the following with respect to those fees:

(1) The total revenues received by the county for the fiscal year.

(2) The total expenditures and encumbered funds by the county for the fiscal year. For purposes of this subdivision, ''encumbered funds'' shall mean funding that is scheduled to be spent pursuant to a determined schedule and for an identified purchase consistent with this section.

(3) Any unexpended or unencumbered fee revenues for the county for the fiscal year.

(4) The estimated annual cost of the purchase, operation, and maintenance of automated mobile and fixed location fingerprint equipment, related infrastructure, law enforcement enhancement programs, and personnel created or utilized in accordance with this section for the fiscal year. The listing shall detail the make and model number of the equipment, and include a succinct description of the

related infrastructure items, law enforcement enhancement programs, and the classification or title of any personnel.

(5) How the use of the funds benefits the motoring public.

(g) For each county that fails to submit the report required pursuant to subdivision (f) by November 1 of each year, the Controller shall notify the Department of Motor Vehicles to suspend the fee for that county imposed pursuant to subdivision (a) for one year.

(h) If any funds received by a county pursuant to subdivision (a) are not expended or encumbered in accordance with this section by the close of the fiscal year in which the funds were received, the Controller shall notify the Department of Motor Vehicles to suspend the fee for that county imposed pursuant to subdivision (a) for one year. For purposes of this subdivision, ''encumbered funds'' shall mean funding that is scheduled to be spent pursuant to a determined schedule and for an identified purchase consistent with this section.

(i) On or before January 1, 2004, and on January 1 annually thereafter, the Controller shall prepare and submit to the Legislature a revenue and expenditure summary based on the information provided pursuant to paragraphs (1) to (3), inclusive, of subdivision (f), for each county that has authorized the collection of the fee pursuant to subdivision (a). The Controller shall attach to the revenue and expenditure summary the documents provided by each county pursuant to paragraphs (4) and (5) of subdivisions (f).

(j) 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. No fee imposed pursuant to this section may be collected beyond that date.

CHAPTER 987

An act to add Section 39930 to the Health and Safety Code, relating to air pollution.

[Approved by Governor September 27, 2002. Filed with Secretary of State September 27, 2002.]

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

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

(a) Public health, safety, and welfare may be endangered by the emission of pollutants into the indoor air.

(b) According to the United States Environmental Protection Agency, pollutant levels indoors can be significantly higher than levels outdoors.

(c) Californians have been found to spend about 87 percent of their time indoors. Vulnerable populations, including, but not limited to, the elderly and children, may spend even more time indoors.

(d) Indoor air pollutants can cause cancer, respiratory disease, and other adverse health effects, as well as trigger allergies and asthma attacks.

(e) Exposure patterns among infants and children are likely to result in disproportionately high exposure to indoor air pollutants in comparison to the general population.

(f) Infants and children may be more susceptible to indoor air pollutants in comparison to the general population.

(g) The effects of exposure to toxic air contaminants and other substances that have a common mechanism of toxicity on infants and children should be addressed.

(h) The interaction of multiple indoor air pollutants on infants and children, including the interaction between criteria air pollutants and toxic air contaminants, should be addressed.

(i) In 1996, the federal General Accounting Office found that California's schools ranked as the worst in the nation for indoor environmental conditions, including lighting, heating, noise, and air quality. Twenty-nine percent of California schools were reported as having unsatisfactory ventilation and 22 percent were reported as having unsatisfactory air quality.

(j) A statewide report on indoor air pollution is necessary and desirable to determine the public health hazards caused by indoor air contaminants and potential mitigation measures to resolve those hazards.

SEC. 2. Section 39930 is added to the Health and Safety Code, to read:

39930. (a) The state board shall, not later than January 1, 2004, in consultation with the State Department of Health Services, the Office of Environmental Health Hazard Assessment, the State Energy Resources Conservation and Development Commission, any other state agency the state board determines is appropriate, affected indoor emission sources, and interested members of the public, provide a report to the Legislature summarizing all of the following:

(1) The best scientific information available including, but not limited to, the most recent empirical data, on indoor air pollution including, but not limited to, air contaminants that have been identified as toxic air contaminants pursuant to Sections 39655, 39657, or 39660,

or air contaminants for which the state board has adopted ambient air quality standards.

(2) The potential adverse effects of indoor air pollution exposure on public health in the state, including, but not limited to, vulnerable populations, including, but not limited to, elderly persons, infants, and children, based upon the information described in paragraph (1).

(3) Readily available information about the effects of existing regulations and current industry practices in mitigating those exposures.

(4) A listing that references work performed by other state or federal entities regarding biological and radiological substances, including a summary of activities conducted by the State Department of Health Services pursuant to Chapter 18 (commencing with Section 26100) of Division 20.

(b) The report described in subdivision (a) shall include all of the following:

(1) A list of indoor air pollutants that are described in the summaries provided pursuant to paragraphs (1) and (4) of subdivision (a).

(2) A list of indoor air pollutants, as defined in Section 39013, ranked in groups designated as high, medium, and lower priorities, that the state board has determined, based upon empirical data or other scientific information, are likely to have the most significant adverse impacts on human health through exposures in schools, nonindustrial workplaces, homes, and other indoor locations, and the probable source categories for these pollutants.

(3) An analysis of the indoor emissions, indoor exposures, and potential health effects from the indoor source categories described in paragraph (1), and options for mitigating those health effects in schools, nonindustrial workplaces, homes, and other indoor locations, including, but not limited to, a discussion of the feasibility and public health effects of implementing each option.

(4) A description of options for schools and school districts to improve indoor air quality in public schools. The state board shall develop these options in consultation with representatives from school district facility departments, school district maintenance departments, and statewide educational organizations.

(c) (1) The state board shall enter into an agreement with the National Academy of Sciences, the University of California, the California State University, or a similar institution of higher learning that has scientific expertise, any combination of those entities, or with a scientist or group of scientists of comparable stature and qualifications that is recommended by the President of the University of California, to conduct an external scientific peer review of the scientific basis for the report described in subdivision (a).

(2) The state board may not submit the report to the Legislature until all of the following conditions are met:

(A) The draft report is submitted to the external scientific peer review entity described in paragraph (1) for evaluation.

(B) The external scientific peer review entity, within the timeframe agreed upon by the board and the external scientific peer review entity, prepares written comments that contain an evaluation of the scientific basis for the draft report. If the state board disagrees with any aspect of the findings of the external scientific peer review entity, the state board shall include as part of the final report, an explanation of its basis for arriving at that determination, including, but not limited to, the reasons that the state board determined that the report was based on sound scientific knowledge, methods, and practices.

(d) The state board shall present and review the content of the report described in subdivision (a) at a public meeting prior to providing the report to the Legislature.

CHAPTER 988

An act to amend Section 51226 of, and to add Sections 51221.5, 52525, and 66205.5 to, the Education Code, relating to adult and career technical education.

[Approved by Governor September 27, 2002. Filed with Secretary of State September 27, 2002.]

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

SECTION 1. Section 51221.5 is added to the Education Code, to read:

51221.5. For the purposes of this code, the phrase ''vocational-technical education'' shall have the same meaning as ''career technical education'' as described in subdivision (i) of Section 51220.

SEC. 2. Section 51226 of the Education Code is amended to read:

51226. (a) The Superintendent of Public Instruction shall coordinate the development of, and the State Board of Education shall adopt, model curriculum standards for the career technical education course of study permitted pursuant to subdivision (b) of Section 51225.3. To assist school districts in complying with subdivision (b) of Section 51228, the model standards shall integrate career technical education with the prescribed course of study pursuant in subdivision (b) of Section 51225.3. However, neither the superintendent nor the board

shall adopt regulations on course content or methods of instruction pursuant to this section.

(b) In developing the model curriculum standards, the superintendent shall work in consultation and coordination with an advisory group, including, but not limited to, representatives from all of the following:

(1) Business and industry.

(2) Institutions of higher education, including, but not limited to, the California Community Colleges, the University of California, and the California State University.

(3) Classroom teachers.

(4) School administrators.

(5) Parents and guardians.

(6) The Legislature.

(c) The superintendent shall, to the extent applicable, incorporate the integration of career technical and academic education into the development of curriculum standards for career technical education courses. The standards for a career technical education course of study shall be adopted by January 1, 2005.

(d) Costs incurred by the superintendent in complying with this section shall be covered solely by funds available pursuant to the Carl D. Perkins Vocational and Technical Education Act of 1998 (20 U.S.C. Sec. 2301).

SEC. 3. Section 52525 is added to the Education Code, to read:

52525. The Legislature finds and declares all of the following:

(a) A healthy state economy is dependent on an educated and well-prepared workforce. Career technical education plays a critical role in developing the workforce necessary for the economic viability of the state, keeping pupils engaged in the educational process, and providing meaningful skills that translate to productive careers.

(b) Data and projections from the Employment Development Department reveal that between the years of 2000 and 2006, approximately 711,290 jobs that do not require a college degree will need to be filled.

(c) The United States Department of Labor indicates that only about 20 percent of the jobs in the workforce require a baccalaureate degree.

(d) The State Department of Education reports that over 75 percent of the ''industrial technology education,'' which includes, but is not limited to, automotive, construction, and manufacturing programs in California's schools have closed since the mid-1970s.

(e) The Employment Development Department and other sources reveal that current course offerings and enrollments are insufficient to fill the projected need of the state's future labor market. Existing courses provide only 65 percent of the projected course requirements.

SEC. 4. Section 66205.5 is added to the Education Code, to read:

66205.5. The California State University shall, and the University of California is requested to, do all of the following:

(a) Establish a model uniform set of academic standards for high school courses, including career technical courses pursuant to subdivision (i) of Section 51220, for the purposes of recognition for admission to the California State University and to the University of California, respectively. In developing the model academic standards, the faculty of the postsecondary segments may work in consultation with administrators and faculty from schools maintaining any of grades kindergarten through 12. Participating schools that maintain any of grades kindergarten through 12 shall consult with an advisory group that shall include, but need not be limited to, representatives from all of the following:

(1) The University of California and the California State University.

(2) Business and industry, related to career technical programs in any of grades kindergarten through 12, inclusive.

(3) Classroom teachers in career technical education.

(4) School administrators.

(5) Parents.

(b) Develop and implement a speedy process whereby high schools may obtain approval of their courses to satisfy specified admissions requirements of the California State University and the University of California, respectively, by January 1, 2006. The approval process shall, by August 1 of each school year, notify applying schools whether the application for approval has been approved or denied.

(c) Develop a simple procedure to evaluate a career technical education course submitted by a high school that identifies it as a duplicate of a course offered by another high school that is approved by and satisfies the admissions criteria of the California State University or the University of California. The procedure shall ensure that a duplicated course shall be approved as satisfying the admissions criteria of the California State University or the University of California, respectively, to the same extent as the original course if the review determines that the course successfully duplicates the content and requirements of the original course. If a course is not approved as a duplicate, the California State University or the University of California shall inform the applicant high school of the reasons why the course was not approved and shall provide the applicant with a specific list of requirements that the course must meet in order to be approved as a duplicate. In the event an applicant high school, whose course was not approved as a duplicate, revises the course and resubmits its application, the California State University or the University of California shall respond as expeditiously as possible so that if the course meets the necessary requirements for approval it may be offered in the next fall term.

(d) Take into consideration any previous work completed or policies adopted regarding matters related to subdivisions (a) to (c), inclusive, by the California State University or the University of California, respectively.

SEC. 5. It is the intent of the Legislature that a school district maintaining any of kindergarten to grade 12, inclusive, shall not be required to make changes to existing curriculum pursuant to the amendments made to Section 51226 of the Education Code by this act or by the addition of Section 66205.5 of the Education Code, added by this act.

CHAPTER 989

An act to amend Sections 51226 and 51228 of, and to add Section 51226.1 to, the Education Code, relating to instruction.

[Approved by Governor September 27, 2002. Filed with Secretary of State September 27, 2002.]

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

SECTION 1. (a) It is the intent of the Legislature, in enacting this act, that model curriculum standards and framework for career technical education be created in a manner that allows all pupils to pursue and prepare for the career of their choice and that recognizes the importance of building a skilled workforce.

(b) The State Department of Education shall use existing federal, administrative, and leadership funds from the federal Carl D. Perkins Vocational and Applied Technology Education Act (20 U.S.C. Sec. 2301 and following) for the development of the career and technical education frameworks.

(c) It is further the intent of the Legislature that the members of the advisory group created pursuant to subdivision (b) of Section 51226.1 of the Education Code for the purpose of assisting the Superintendent of Public Instruction in creating model career-technical education standards and a model curriculum framework for career technical education represent all key stakeholders and work toward realizing the goals set forth in subdivision (a).

SEC. 2. Section 51226 of the Education Code is amended to read:

51226. The Superintendent of Public Instruction shall coordinate the development, on a cyclical basis, of model curriculum standards for the course of study required by Section 51225.3 and for a career technical education course of study necessary to assist school districts with

complying with subdivision (b) of Section 51228. The superintendent shall set forth these standards in terms of a wide range of specific competencies, including higher level skills, in each academic subject area. The superintendent shall review currently available textbooks in conjunction with the curriculum standards. The superintendent shall seek the advice of classroom teachers, school administrators, parents, postsecondary educators, and representatives of business and industry in developing these curriculum standards. The superintendent shall recommend policies to the State Board of Education for consideration and adoption by the board. The State Board of Education shall adopt these policies no later than January 1, 1985. However, neither the superintendent nor the board shall adopt rules or regulations for course content or methods of instruction.

The superintendent shall, to the extent applicable, incorporate the integration of career technical and academic education into the development of curriculum standards for career technical education courses. The standards for a career technical education course of study shall be adopted no later than June 1, 2005.

SEC. 3. Section 51226.1 is added to the Education Code, to read:

51226.1. (a) Upon adoption of the model curriculum standards developed pursuant to Section 51226, the Superintendent of Public Instruction shall develop a curriculum framework consistent with criteria set forth in subdivision (a) of Section 60005 that offers a blueprint for implementation of career and technical education. The framework shall be adopted no later than June 1, 2006.

(b) In developing the framework, the superintendent shall work in consultation and coordination with an advisory group, including, but not limited to, representatives from all of the following:

(1) Business and industry.
(2) Labor.
(3) The California Community Colleges.
(4) The University of California.
(5) The California State University.
(6) Classroom teachers.
(7) School administrators.
(8) Pupils.
(9) Parents and guardians.
(10) Representatives of the Legislature.
(11) The State Department of Education.
(12) The Labor and Workforce Development Agency.

(c) In convening the membership of the advisory group set forth in subdivision (b), the Superintendent of Public Instruction is encouraged to seek representation broadly reflective of the state population.

(d) Costs incurred by the Superintendent of Public Instruction in complying with this section shall be covered, to the extent permitted by federal law, by the state administrative and leadership funds available pursuant to the Carl D. Perkins Vocational and Technical Education Act of 1998 (20 U.S.C. Sec. 2301).

(e) In developing the framework, the Superintendent of Public Instruction shall consider developing frameworks for various career pathways that will prepare pupils for both career entry and matriculation into postsecondary education.

(f) The adoption of the framework developed and adopted pursuant to this section by a local educational agency shall be voluntary.

SEC. 4. Section 51228 of the Education Code is amended to read:

51228. (a) Each school district maintaining any of grades 7 to 12, inclusive, shall offer to all otherwise qualified pupils in those grades a course of study fulfilling the requirements and prerequisites for admission to the California public institutions of postsecondary education and shall provide a timely opportunity to each of those pupils to enroll within a four-year period in each course necessary to fulfill those requirements and prerequisites prior to graduation from high school.

(b) Each school district maintaining any of grades 7 to 12, inclusive, shall offer to all otherwise qualified pupils in those grades a course of study that provides an opportunity for those pupils to attain entry-level employment skills in business or industry upon graduation from high school. Districts are encouraged to provide all pupils with a rigorous academic curriculum that integrates academic and career skills, incorporates applied learning in all disciplines, and prepares all pupils for high school graduation and career entry.

(c) Any school district that adopts a required curriculum that meets or exceeds the model standards developed and adopted by the State Board of Education pursuant to Section 51226 shall be deemed to have fulfilled its responsibilities pursuant to subdivision (b).

(d) Any school district that adopts a required curriculum pursuant to subdivision (c) that meets or exceeds the model standards developed by the State Board of Education pursuant to Section 51226, or that adopts alternative means for pupils to complete the prescribed course of study pursuant to subdivision (b) of Section 51225.3, may substitute pupil demonstration of competence in the prescribed subjects through a practical demonstration of these skills in a regional occupational center or program, work experience, interdisciplinary study, independent study, credit earned at a postsecondary institution, or other outside school experience, as prescribed by Section 51225.

SEC. 5. The provisions of this bill may only be implemented with federal funds that are available for the purposes set forth in this bill.

CHAPTER 990

An act to amend Section 11105.3 of the Penal Code, relating to criminal history information.

[Approved by Governor September 27, 2002. Filed with Secretary of State September 27, 2002.]

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

SECTION 1. Section 11105.3 of the Penal Code is amended to read:

11105.3. (a) Notwithstanding any other law, a human resource agency or an employer may request from the Department of Justice records of all convictions or any arrest pending adjudication involving the offenses specified in subdivision (h) of a person who applies for a license, employment, or volunteer position, in which he or she would have supervisory or disciplinary power over a minor or any person under his or her care. The department shall furnish the information to the requesting employer and shall also send a copy of the information to the applicant.

(b) Any request for records under subdivision (a) shall include the applicant's fingerprints, which may be taken by the requester, and any other data specified by the department. The request shall be on a form approved by the department, and the department may charge a fee to be paid by the employer, human resource agency, or applicant for the actual cost of processing the request. However, no fee shall be charged a nonprofit organization. The department shall destroy an application within six months after the requested information is sent to the employer and applicant.

(c) (1) Where a request pursuant to this section reveals that a prospective employee or volunteer has been convicted of an offense specified in paragraph (1) of subdivision (h), and where the agency or employer hires the prospective employee or volunteer, the agency or employer shall notify the parents or guardians of any minor who will be supervised or disciplined by the employee or volunteer. The notice shall be given to the parents or guardians with whom the child resides, and shall be given at least 10 days prior to the day that the employee or volunteer begins his or her duties or tasks. Notwithstanding any other provision of law, any person who conveys or receives information in good faith conformity with this section is exempt from prosecution

under Section 11142 or 11143 for that conveying or receiving of information. Notwithstanding subdivision (d), the notification requirements of this subdivision shall apply as an additional requirement of any other provision of law requiring criminal record access or dissemination of criminal history information.

(2) The notification requirement pursuant to paragraph (1) shall not apply to a misdemeanor conviction for violating Section 261.5 or to a conviction for violating Section 262 or 273.5. Nothing in this paragraph shall preclude an employer from requesting records of convictions for violating Section 261.5, 262, or 273.5 from the Department of Justice pursuant to this section.

(d) Nothing in this section supersedes any law requiring criminal record access or dissemination of criminal history information. In any conflict with another statute, dissemination of criminal history information shall be pursuant to the mandatory statute. This subdivision applies to, but is not limited to, requirements pursuant to Article 1 (commencing with Section 1500) of Chapter 3 of, and Chapter 3.2 (commencing with Section 1569) and Chapter 3.4 (commencing with Section 1596.70) of, Division 2 of, and Section 1522 of, the Health and Safety Code, and Sections 8712, 8811, and 8908 of the Family Code.

(e) The department may adopt regulations to implement the provisions of this section as necessary.

(f) As used in this section, ''employer'' means any nonprofit corporation or other organization specified by the Attorney General which employs or uses the services of volunteers in positions in which the volunteer or employee has supervisory or disciplinary power over a child or children.

(g) As used in this section, ''human resource agency'' means a public or private entity, excluding any agency responsible for licensing of facilities pursuant to the California Community Care Facilities Act (Chapter 3 (commencing with Section 1500)), the California Residential Care Facilities for the Elderly Act (Chapter 3.2 (commencing with Section 1569)), Chapter 3.01 (commencing with Section 1568.01), and the California Child Day Care Facilities Act (Chapter 3.4 (commencing with Section 1596.70)) of Division 2 of the Health and Safety Code, responsible for determining the character and fitness of a person who is:

(1) Applying for a license, employment, or as a volunteer within the human services field that involves the care and security of children, the elderly, the handicapped, or the mentally impaired.

(2) Applying to be a volunteer who transports individuals impaired by drugs or alcohol.

(3) Applying to adopt a child or to be a foster parent.

(h) Records of the following offenses shall be furnished as provided in subdivision (a), with the exception of transportation companies authorized pursuant to this section:

(1) Every conviction rendered against the applicant for a violation or attempted violation of any offense specified in Section 15660 of the Welfare and Institutions Code. However, with the exception of those offenses for which registration is required pursuant to Section 290, the Department of Justice shall not disseminate information pursuant to this subdivision unless the conviction occurred within 10 years of the date of the application or the conviction is over 10 years old but the subject of the request was incarcerated within 10 years of the application.

(2) Every arrest for a violation or attempted violation of an offense specified in Section 15660 of the Welfare and Institutions Code for which the applicant is presently awaiting trial, whether the applicant is incarcerated or has been released on bail or on his or her own recognizance pending trial.

(i) Except as provided in subdivision (c), any criminal history information obtained pursuant to this section is confidential and no recipient shall disclose its contents other than for the purpose for which it was acquired.

SEC. 1.5. Section 11105.3 of the Penal Code is amended to read:

11105.3. (a) Notwithstanding any other law, a human resource agency or an employer may request from the Department of Justice records of all convictions or any arrest pending adjudication involving the offenses specified in subdivision (a) of Section 15660 of the Welfare and Institutions Code of a person who applies for a license, employment, or volunteer position, in which he or she would have supervisory or disciplinary power over a minor or any person under his or her care. The department shall furnish the information to the requesting employer and shall also send a copy of the information to the applicant.

(b) Any request for records under subdivision (a) shall include the applicant's fingerprints, which may be taken by the requester, and any other data specified by the department. The request shall be on a form approved by the department, and the department may charge a fee to be paid by the employer, human resource agency, or applicant for the actual cost of processing the request. However, no fee shall be charged to a nonprofit organization.

(c) (1) Where a request pursuant to this section reveals that a prospective employee or volunteer has been convicted of a violation or attempted violation of Section 220, 261.5, 262, 273a, 273d, or 273.5, or any sex offense listed in Section 290, except for the offense specified in subdivision (d) of Section 243.4, and where the agency or employer hires the prospective employee or volunteer, the agency or employer shall notify the parents or guardians of any minor who will be supervised or

disciplined by the employee or volunteer. A conviction for a violation or attempted violation of an offense committed outside the State of California shall be included in this notice if the offense would have been a crime specified in this subdivision if committed in California. The notice shall be given to the parents or guardians with whom the child resides, and shall be given at least 10 days prior to the day that the employee or volunteer begins his or her duties or tasks. Notwithstanding any other provision of law, any person who conveys or receives information in good faith and in conformity with this section is exempt from prosecution under Section 11142 or 11143 for that conveying or receiving of information. Notwithstanding subdivision (d), the notification requirements of this subdivision shall apply as an additional requirement of any other provision of law requiring criminal record access or dissemination of criminal history information.

(2) The notification requirement pursuant to paragraph (1) shall not apply to a misdemeanor conviction for violating Section 261.5 or to a conviction for violating Section 262 or 273.5. Nothing in this paragraph shall preclude an employer from requesting records of convictions for violating Section 261.5, 262, or 273.5 from the Department of Justice pursuant to this section.

(d) Nothing in this section supersedes any law requiring criminal record access or dissemination of criminal history information. In any conflict with another statute, dissemination of criminal history information shall be pursuant to the mandatory statute. This subdivision applies to, but is not limited to, requirements pursuant to Article 1 (commencing with Section 1500) of Chapter 3 of, and Chapter 3.2 (commencing with Section 1569) and Chapter 3.4 (commencing with Section 1596.70) of, Division 2 of, and Section 1522 of, the Health and Safety Code, and Sections 8712, 8811, and 8908 of the Family Code.

(e) The department may adopt regulations to implement the provisions of this section as necessary.

(f) As used in this section, ''employer'' means any nonprofit corporation or other organization specified by the Attorney General which employs or uses the services of volunteers in positions in which the volunteer or employee has supervisory or disciplinary power over a child or children.

(g) As used in this section, ''human resource agency'' means a public or private entity, excluding any agency responsible for licensing of facilities pursuant to the California Community Care Facilities Act (Chapter 3 (commencing with Section 1500)), the California Residential Care Facilities for the Elderly Act (Chapter 3.2 (commencing with Section 1569)), Chapter 3.01 (commencing with Section 1568.01), and the California Child Day Care Facilities Act (Chapter 3.4 (commencing

with Section 1596.70)) of Division 2 of the Health and Safety Code, responsible for determining the character and fitness of a person who is:

(1) Applying for a license, employment, or as a volunteer within the human services field that involves the care and security of children, the elderly, the handicapped, or the mentally impaired.

(2) Applying to be a volunteer who transports individuals impaired by drugs or alcohol.

(3) Applying to adopt a child or to be a foster parent.

(h) Except as provided in subdivision (c), any criminal history information obtained pursuant to this section is confidential and no recipient shall disclose its contents other than for the purpose for which it was acquired.

SEC. 2. Section 1.5 of this bill incorporates amendments to Section 11105.3 of the Penal Code proposed by both this bill and SB 900. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2003, (2) each bill amends Section 11105.3 of the Penal Code, and (3) this bill is enacted after SB 900, in which case Section 1 of this bill shall not become operative.

CHAPTER 991

An act to amend Section 186.2 of the Penal Code, relating to forfeitures.

[Approved by Governor September 27, 2002. Filed with Secretary of State September 27, 2002.]

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

SECTION 1. Section 186.2 of the Penal Code is amended to read:

186.2. For purposes of this chapter, the following definitions apply:

(a) ''Criminal profiteering activity'' means any act committed or attempted or any threat made for financial gain or advantage, which act or threat may be charged as a crime under any of the following sections:

(1) Arson, as defined in Section 451.

(2) Bribery, as defined in Sections 67, 67.5, and 68.

(3) Child pornography or exploitation, as defined in subdivision (b) of Section 311.2, or Section 311.3 or 311.4, which may be prosecuted as a felony.

(4) Felonious assault, as defined in Section 245.

(5) Embezzlement, as defined in Sections 424 and 503.

(6) Extortion, as defined in Section 518.

(7) Forgery, as defined in Section 470.

(8) Gambling, as defined in Sections 337a to 337f, inclusive, and Section 337i, except the activities of a person who participates solely as an individual bettor.

(9) Kidnapping, as defined in Section 207.

(10) Mayhem, as defined in Section 203.

(11) Murder, as defined in Section 187.

(12) Pimping and pandering, as defined in Section 266.

(13) Receiving stolen property, as defined in Section 496.

(14) Robbery, as defined in Section 211.

(15) Solicitation of crimes, as defined in Section 653f.

(16) Grand theft, as defined in Section 487.

(17) Trafficking in controlled substances, as defined in Sections 11351, 11352, and 11353 of the Health and Safety Code.

(18) Violation of the laws governing corporate securities, as defined in Section 25541 of the Corporations Code.

(19) Any of the offenses contained in Chapter 7.5 (commencing with Section 311) of Title 9, relating to obscene matter, or in Chapter 7.6 (commencing with Section 313) of Title 9, relating to harmful matter that may be prosecuted as a felony.

(20) Presentation of a false or fraudulent claim, as defined in Section 550.

(21) False or fraudulent activities, schemes, or artifices, as described in Section 14107 of the Welfare and Institutions Code.

(22) Money laundering, as defined in Section 186.10.

(23) Offenses relating to the counterfeit of a registered mark, as specified in Section 350.

(24) Offenses relating to the unauthorized access to computers, computer systems, and computer data, as specified in Section 502.

(25) Conspiracy to commit any of the crimes listed above, as defined in Section 182.

(26) Subdivision (a) of Section 186.22, or a felony subject to enhancement as specified in subdivision (b) of Section 186.22.

(b) ''Pattern of criminal profiteering activity'' means engaging in at least two incidents of criminal profiteering, as defined by this act, that meet the following requirements:

(1) Have the same or a similar purpose, result, principals, victims, or methods of commission, or are otherwise interrelated by distinguishing characteristics.

(2) Are not isolated events.

(3) Were committed as a criminal activity of organized crime.

Acts that would constitute a ''pattern of criminal profiteering activity'' may not be used by a prosecuting agency to seek the remedies provided by this chapter unless the underlying offense occurred after the effective date of this chapter and the prior act occurred within 10 years,

excluding any period of imprisonment, of the commission of the underlying offense. A prior act may not be used by a prosecuting agency to seek remedies provided by this chapter if a prosecution for that act resulted in an acquittal.

(c) ''Prosecuting agency'' means the Attorney General or the district attorney of any county.

(d) ''Organized crime'' means crime that is of a conspiratorial nature and that is either of an organized nature and seeks to supply illegal goods and services such as narcotics, prostitution, loan sharking, gambling, and pornography, or that, through planning and coordination of individual efforts, seeks to conduct the illegal activities of arson for profit, hijacking, insurance fraud, smuggling, operating vehicle theft rings, or systematically encumbering the assets of a business for the purpose of defrauding creditors. ''Organized crime'' also means crime committed by a criminal street gang, as defined in subdivision (f) of Section 186.22. ''Organized crime'' also means false or fraudulent activities, schemes, or artifices, as described in Section 14107 of the Welfare and Institutions Code.

(e) ''Underlying offense'' means an offense enumerated in subdivision (a) for which the defendant is being prosecuted.

CHAPTER 992

An act to amend Section 25366.5 of, and to add Section 25250.9 to, the Health and Safety Code, relating to hazardous substances.

[Approved by Governor September 27, 2002. Filed with Secretary of State September 27, 2002.]

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

SECTION 1. Section 25250.9 is added to the Health and Safety Code, to read:

25250.9. (a) Except as provided in subdivision (b), a hazardous waste transporter who transports used oil shall provide a written notification in the form below to each generator from whom the transporter receives used oil:

IMPORTANT NOTICE REGARDING THE DISPOSITION OF YOUR USED OIL
PLEASE SIGN AFTER READING

_____ (used oil transporter) hereby advises _____ (used oil generator) that _____ (generator's) shipment of used oil may be transported to a facility that is required to comply with federal regulations applicable to management of used oil, but that is not required to comply with the more stringent requirements applicable to hazardous waste management facilities. California facilities that handle or process used oil are required to meet those more stringent requirements, and some out-of-state facilities that process used oil also meet those requirements. These include more stringent leak detection and prevention requirements, engineering certifications of tank integrity, and financial assurances for closure and accidental releases. It is lawful to send used oil to out-of-state facilities that comply only with federal used oil management standards and not these more stringent requirements.

This notification is for information purposes only.

_____ (signed, Transporter) Date: _____

_____ (signed, Generator) Date: _____

(b) A transporter is not required to provide a generator with the notification specified in subdivision (a) if either of the following apply:

(1) The generator from whom the transporter receives used oil specifically designates in writing that the used oil is to be transported to a specified facility and that facility either is authorized by the department to produce used oil into recycled oil or it is operating in accordance with a hazardous waste facilities permit or interim status document issued pursuant to the federal act.

(2) The transporter annually certifies to the generator, in writing, that any used oil that the transporter receives from the generator will be transported only to a facility that is authorized by the department to produce used oil into recycled oil or to a facility that is lawfully operating in accordance with a hazardous waste facilities permit or interim status document issued pursuant to the federal act.

(c) A transporter may make the certification specified in subdivision (a) even if the used oil the transporter receives from the generator is first transported to a transfer facility, as defined in paragraph (3) of subdivision (a) of Section 25123.3, or a storage facility authorized by the department to store used oil, before the used oil is sent to a facility that

is authorized by the department to produce used oil into recycled oil or to a facility that is lawfully operating in accordance with a hazardous waste facilities permit or interim status document issued pursuant to the federal act.

(d) Any person who makes a material misrepresentation in the course of implementing the requirements of this section is in violation of this chapter. A transporter that relies in reasonable good faith upon a statement made by a facility to comply with this section is not in violation of this chapter.

(e) Each transporter subject to this section shall retain the documents necessary to demonstrate compliance with this section, including, but not limited to, each signed notification form, for as long as the transporter is required to retain the manifest for the used oil to which the documents apply.

(f) This section shall not be construed to prohibit the transportation of used oil to any facility located outside the state, or to impose liability upon, or in any way affect the liability of a generator whose used oil is transported to a facility located outside the state in accordance with the requirements of this section.

(g) A transporter may place the notification and signature and date block specified in subdivision (a) on the back of the service order the transporter provides to the generator, if the notification language and associated signature and date block specified in subdivision (a) is the only wording appearing on that side of the service order and the transporter and generator sign the signature and date block each time the generator receives a service order.

SEC. 2. Section 25366.5 of the Health and Safety Code is amended to read:

25366.5. (a) Any public agency operating a household hazardous waste collection program or any person operating such a program under a written agreement with a public agency, or, for material received from the public as used oil, any person operating a certified used oil collection center as provided in Section 48660 of the Public Resources Code, shall not be held liable in any cost recovery action brought pursuant to Section 25360 , including, but not limited to, any action to recover the fees imposed by Section 25343 or any action brought pursuant to subdivision (e) of Section 25363, for any waste that has been properly handled and transported to an authorized hazardous waste treatment, storage, or disposal facility at a location other than that of the collection program.

(b) For purposes of this section, ''household hazardous waste collection program'' means a program or facility, specified in Section 25218.1, in which hazardous wastes from households and conditionally exempt small quantity generators, are collected and ultimately

transferred to an authorized hazardous waste treatment, storage, or disposal facility.

(c) Except as provided in subdivision (a), this section does not affect or modify the obligations or liabilities of any person imposed pursuant to any state or federal law.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

CHAPTER 993

An act to add and repeal Section 41821.3 of the Public Resources Code, relating to solid waste.

[Approved by Governor September 27, 2002. Filed with Secretary of State September 27, 2002.]

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

SECTION 1. Section 41821.3 is added to the Public Resources Code, to read:

41821.3. (a) For the purposes of this section the following definitions shall apply:

(1) ''Inert waste'' means only rock, concrete, brick, sand, soil, ceramics, and cured asphalt. ''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 in Section 40141.

(2) ''Inert waste removed from the solid waste stream and not disposed of in a solid waste landfill'' means the use or placement of inert waste on property where surface mining operations, as defined in Section 2735, are being conducted, or have been conducted previously, if the use or placement is for purposes of reclamation, as defined in Section 2733, pursuant to either of the following:

(A) A reclamation plan approved under Section 2774.

(B) 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 mine site.

(3) ''Jurisdiction'' means a city, county, or regional agency.

(b) A jurisdiction shall deduct, from the amount of disposed waste that is required to be included in the annual report submitted to the board pursuant to subdivision (b) of Section 41821, inert waste removed from the solid waste stream and not disposed of in a solid waste landfill, as defined in paragraph (2) of subdivision (a). A jurisdiction shall deduct this inert waste only in accordance with the procedures specified in subdivisions (c) to (e), inclusive, commencing with the report submitted by the jurisdiction to the board for the year 2001.

(c) (1) A jurisdiction shall deduct inert waste pursuant to subdivision (b) from its reported disposal tonnage for the year 2001, and shall identify, in the jurisdiction's annual report, that the deduction is being made pursuant to this section and the exact amount of the deduction.

(2) The board shall verify that the deduction made pursuant to paragraph (1) is consistent with the requirements of this section and the amount deducted is consistent with the amount reported through the board's disposal reporting system. The board shall approve the deduction made by the jurisdiction upon making this verification.

(3) If the board finds that the amount deducted pursuant to paragraph (1) does not meet the requirements of this section, or if the amount deducted is not consistent with the amount reported through the board's disposal reporting system, the board shall notify the jurisdiction of its preliminary determination and confer with representatives of the jurisdiction to reach an agreement regarding the amount of the deduction. If the jurisdiction agrees upon the amount of the deduction, the board shall approve the deduction as modified. If the board and the jurisdiction are unable to reach agreement upon the amount of the deduction, the jurisdiction may request a hearing before the board to obtain a final determination.

(d) (1) A jurisdiction shall deduct tonnage from its base-year disposal in an amount equal to the amount deducted from the jurisdiction's 2001 disposal tonnage pursuant to this section. The jurisdiction shall not deduct an amount from its base-year disposal tonnage that is greater than the amount of disposed inert waste that was included in its most recent board-approved revised base-year approved by the board.

(2) The board shall verify that the base-year deduction made pursuant to paragraph (1) is consistent with the requirements of this section. The board shall approve the revised base-year disposal tonnage upon making this verification.

(3) If the board finds that the base-year deduction requested pursuant to paragraph (1) is not consistent with the requirements of this section,

the board shall notify the jurisdiction of its preliminary determination and confer with representatives of the jurisdiction in order to reach agreement regarding the amount of the deduction. If the jurisdiction agrees upon the amount of the deduction, the board shall approve the revised base-year disposal tonnage accordingly. If the board and the jurisdiction are unable to reach agreement upon the amount of the deduction, the jurisdiction may request a hearing before the board to obtain a final determination.

(e) (1) A jurisdiction shall deduct all inert waste from its reported disposal tonnage in all of its annual reports for all subsequent years. The board shall verify this deduction pursuant to paragraphs (2) and (3) of subdivision (c).

(2) If the board approves the jurisdiction's revised base-year disposal tonnage pursuant to subdivision (d), the revised base year disposal tonnage shall not be subsequently revised for inert waste under this section.

(f) This section does not limit the authority of the board to require any facility that uses or places inert material on property where surface mining operations are being conducted, or have been conducted previously, to report to the board on the quantities of inert material used or placed on the property for the purpose of reclamation.

(g) It is the intent of the Legislature that a city, county, or regional agency not be required to revise its source reduction and recycling element to comply with this section unless the city, county, or regional agency elects to implement this section as authorized by this section.

(h) This section shall become inoperative on the operative date of any regulation adopted by the board relating to ''inert waste removed from the solid waste stream and not disposed of in a solid waste landfill,'' as defined in paragraph (2) of subdivision (a), if that regulation includes procedures to facilitate the counting of the inert waste for purposes of the disposal reporting system established under Section 41821.5 when that inert waste is placed in a mine reclamation facility as fill material, and, as of January 1 immediately following that operative date, is repealed, unless a later enacted statute that is enacted before that January 1 deletes or extends the dates on which it becomes inoperative and is repealed.

CHAPTER 994

An act to add Section 71116 to the Public Resources Code, relating to environmental justice.

[Approved by Governor September 27, 2002. Filed with Secretary of State September 27, 2002.]

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

SECTION 1. Section 71116 is added to the Public Resources Code, to read:

71116. (a) The Environmental Justice Small Grant Program is hereby established under the jurisdiction of the California Environmental Protection Agency. The California Environmental Protection Agency shall adopt regulations for the implementation of this section. These regulations shall include, but need not be limited to, all of the following:

(1) Specific criteria and procedures for the implementation of the program.

(2) A requirement that each grant recipient submit a written report to the agency documenting its expenditures of the grant funds and the results of the funded project.

(3) Provisions promoting the equitable distribution of grant funds in a variety of areas throughout the state, with the goal of making grants available to organizations that will attempt to address environmental justice issues.

(b) The purpose of the program is to provide grants to eligible community groups, including, but not limited to, community-based, grassroots nonprofit organizations that are located in areas adversely affected by environmental pollution and hazards and that are involved in work to address environmental justice issues.

(c) (1) Both of the following are eligible to receive moneys from the fund.

(A) A nonprofit entity.

(B) A federally recognized tribal government.

(2) For the purposes of this section, ''nonprofit entity'' means any corporation, trust, association, cooperative, or other organization that meets all of the following criteria:

(A) Is operated primarily for scientific, educational, service, charitable, or other similar purposes in the public interest.

(B) Is not organized primarily for profit.

(C) Uses its net proceeds to maintain, improve, or expand, or any combination thereof, its operations.

(D) Is a tax-exempt organization under Section 501 (c)(3) of the federal Internal Revenue Code, or is able to provide evidence to the agency that the state recognizes the organization as a nonprofit entity.

(3) For the purposes of this section, ''nonprofit entity'' specifically excludes an organization that is a tax-exempt organization under Section 501 (c)(4) of the federal Internal Revenue Code.

(d) Individuals may not receive grant moneys from the fund.

(e) Grant recipients shall use the grant award to fund only the project described in the recipient's application. Recipients shall not use the grant funding to shift moneys from existing or proposed projects to activities for which grant funding is prohibited under subdivision (g).

(f) Grants shall be awarded on a competitive basis for projects that are based in communities with the most significant exposure to pollution. Grants shall be limited to any of the following purposes and no other:

(1) Resolve environmental problems through distribution of information.

(2) Identify improvements in communication and coordination among agencies and stakeholders in order to address the most significant exposure to pollution.

(3) Expand the understanding of a community about the environmental issues that affect their community.

(4) Develop guidance on the relative significance of various environmental risks.

(5) Promote community involvement in the decisionmaking process that affects the environment of the community.

(6) Present environmental data for the purposes of enhancing community understanding of environmental information systems and environmental information.

(g) (1) The agency shall not award grants for, and grant funding shall not be used for, any of the following:

(A) Other state grant programs.

(B) Lobbying or advocacy activities relating to any federal, state, regional, or local legislative, quasi-legislative, adjudicatory, or quasi-judicial proceeding involving development or adoption of statutes, guidelines, rules, regulations, plans or any other governmental proposal, or involving decisions concerning siting, permitting, licensing, or any other governmental action.

(C) Litigation, administrative challenges, enforcement action, or any type of adjudicatory proceeding.

(D) Funding of a lawsuit against any governmental entity.

(E) Funding of a lawsuit against a business or a project owned by a business.

(F) Matching state or federal funding.

(G) Performance of any technical assessment for purposes of opposing or contradicting a technical assessment prepared by a public agency.

(2) An organization's use of funds from a grant awarded under this section to educate a community regarding an environmental justice issue or a governmental process does not preclude that organization from subsequent lobbying or advocacy concerning that same issue or

governmental process, as long as the lobbying or advocacy is not funded by a grant awarded under this section.

(h) The agency shall review, evaluate, and select grant recipients, and screen grant applications to ensure that they meet the requirements of this section.

(i) The maximum amount of a grant provided pursuant to this section may not exceed twenty thousand dollars ($20,000).

(j) For the purposes of this section, ''environmental justice'' has the same meaning as defined in Section 65040.12 of the Government Code.

(k) This section shall be implemented only during fiscal years for which an appropriation is provided for the purposes of this section in the annual Budget Act or in another statute.

CHAPTER 995

An act to amend Section 13385 of the Water Code, relating to water.

[Approved by Governor September 27, 2002. Filed with Secretary of State September 27, 2002.]

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

SECTION 1. 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) (1) Except as provided in paragraph (2), for the 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.

(2) (A) For the purposes of subdivisions (h) and (i), a single operational upset in a wastewater treatment unit that treats wastewater using a biological treatment process shall be treated as a single violation, even if the operational upset results in violations of more than one effluent limitation and the violations continue for a period of more than one day, if all of the following apply:

(i) The discharger demonstrates all of the following:

(I) The upset was not caused by wastewater treatment operator error and was not due to discharger negligence.

(II) But for the operational upset of the biological treatment process, the violations would not have occurred nor would they have continued for more than one day.

(III) The discharger carried out all reasonable and immediately feasible actions to reduce noncompliance with the applicable effluent limitations.

(ii) The discharger is implementing an approved pretreatment program, if so required by federal or state law.

(B) Subparagraph (A) only applies to violations that occur during a period for which the regional board has determined that violations are unavoidable, but in no case may that period exceed 30 days.

(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), (k), and (*l*), a mandatory minimum penalty of three thousand dollars ($3,000) shall be assessed for each serious violation.

(2) For the purposes of this section, a ''serious violation'' means any waste discharge that violates 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.

(i) (1) Notwithstanding any other provision of this division, and except as provided in subdivisions (j), (k), and (*l*), 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:

(A) Violates a waste discharge requirement effluent limitation.

(B) Fails to file a report pursuant to Section 13260.

(C) Files an incomplete report pursuant to Section 13260.

(D) Violates 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.

(2) For the purposes of this section, a ''period of six consecutive months'' means the period commencing on the date that one of the violations described in this subdivision occurs and ending 180 days after that date.

(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) (i) The operation of a new or reconstructed wastewater treatment unit during a defined period of adjusting or testing, not to exceed 90 days for a wastewater treatment unit that relies on a biological treatment process and not to exceed 30 days for any other wastewater treatment unit, if all of the following requirements are met:

(I) The discharger has submitted to the regional board, at least 30 days in advance of the operation, an operations plan that describes the actions the discharger will take during the period of adjusting and testing, including steps to prevent violations and identifies the shortest reasonable time required for the period of adjusting and testing, not to exceed 90 days for a wastewater treatment unit that relies on a biological treatment process and not to exceed 30 days for any other wastewater treatment unit.

(II) The regional board has not objected in writing to the operations plan.

(III) The discharger demonstrates that the violations resulted from the operation of the new or reconstructed wastewater treatment unit and that the violations could not have reasonably been avoided.

(IV) The discharger demonstrates compliance with the operations plan.

(V) In the case of a reconstructed wastewater treatment unit, the unit relies on a biological treatment process that is required to be out of operation for at least 14 days in order to perform the reconstruction, or the unit is required to be out of operation for at least 14 days and, at the time of the reconstruction, the cost of reconstructing the unit exceeds 50 percent of the cost of replacing the wastewater treatment unit.

(ii) For the purposes of this section, ''wastewater treatment unit'' means a component of a wastewater treatment plant that performs a designated treatment function.

(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 towards 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*) (1) In lieu of assessing penalties pursuant to subdivision (h) or (i), the state board or regional board, with the concurrence of the discharger, may direct a portion of the penalty amount to be expended on a supplemental environmental project in accordance with the enforcement policy of the state board. If the penalty amount exceeds fifteen thousand dollars ($15,000), the portion of the penalty amount that may be directed to be expended on a supplemental environmental project may not exceed fifteen thousand dollars ($15,000) plus 50 percent of the penalty amount that exceeds fifteen thousand dollars ($15,000).

(2) For the purposes of this section, a ''supplemental environmental project'' means an environmentally beneficial project that a person agrees to undertake, with the approval of the regional board, that would not be undertaken in the absence of an enforcement action under this section.

(3) This subdivision applies to the imposition of penalties pursuant to subdivision (h) or (i) on or after January 1, 2003, without regard to the date on which the violation occurs.

(m) 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.

(n) Funds collected pursuant to this section shall be deposited in the State Water Pollution Cleanup and Abatement Account.

(o) (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.

(p) The amendments made to subdivisions (f), (h), (i), and (j) during the second year of the 2001–02 Regular Session apply only to violations that occur on or after January 1, 2003.

SEC. 2. 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) (1) Except as provided in paragraph (2), for the 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.

(2) (A) For the purposes of subdivisions (h) and (i), a single operational upset in a wastewater treatment unit that treats wastewater using a biological treatment process shall be treated as a single violation, even if the operational upset results in violations of more than one effluent limitation and the violations continue for a period of more than one day, if all of the following apply:

(i) The discharger demonstrates all of the following:

(I) The upset was not caused by wastewater treatment operator error and was not due to discharger negligence.

(II) But for the operational upset of the biological treatment process, the violations would not have occurred nor would they have continued for more than one day.

(III) The discharger carried out all reasonable and immediately feasible actions to reduce noncompliance with the applicable effluent limitations.

(ii) The discharger is implementing an approved pretreatment program, if so required by federal or state law.

(B) Subparagraph (A) only applies to violations that occur during a period for which the regional board has determined that violations are unavoidable, but in no case may that period exceed 30 days.

(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), (k), and (*l*), a mandatory minimum penalty of three thousand dollars ($3,000) shall be assessed for each serious violation.

(2) For the purposes of this section, a ''serious violation'' means any waste discharge that violates 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.

(i) (1) Notwithstanding any other provision of this division, and except as provided in subdivisions (j), (k), and (*l*), 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:

(A) Violates a waste discharge requirement effluent limitation.

(B) Fails to file a report pursuant to Section 13260.

(C) Files an incomplete report pursuant to Section 13260.

(D) Violates 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.

(2) For the purposes of this section, a ''period of six consecutive months'' means a period commencing on the date that one of the

violations described in this subdivision occurs and ending 180 days after that date.

(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) (i) The operation of a new or reconstructed wastewater treatment unit during a defined period of adjusting or testing, not to exceed 90 days for a wastewater treatment unit that relies on a biological treatment process and not to exceed 30 days for any other wastewater treatment unit, if all of the following requirements are met:

(I) The discharger has submitted to the regional board, at least 30 days in advance of the operation, an operations plan that describes the actions the discharger will take during the period of adjusting and testing, including steps to prevent violations and identifies the shortest reasonable time required for the period of adjusting and testing, not to exceed 90 days for a wastewater treatment unit that relies on a biological treatment process and not to exceed 30 days for any other wastewater treatment unit.

(II) The regional board has not objected in writing to the operations plan.

(III) The discharger demonstrates that the violations resulted from the operation of the new or reconstructed wastewater treatment unit and that the violations could not have reasonably been avoided.

(IV) The discharger demonstrates compliance with the operations plan.

(V) In the case of a reconstructed wastewater treatment unit, the unit relies on a biological treatment process that is required to be out of operation for at least 14 days in order to perform the reconstruction, or the unit is required to be out of operation for at least 14 days and, at the time of the reconstruction, the cost of reconstructing the unit exceeds 50 percent of the cost of replacing the wastewater treatment unit.

(ii) For the purposes of this section, ''wastewater treatment unit'' means a component of a wastewater treatment plant that performs a designated treatment function.

(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 or Section 13308, 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.

(iv) The discharger is a publicly owned treatment works located in Orange County that is unable to meet effluent limitations for biological oxygen demand, suspended solids, or both, because the publicly owned treatment works meets all of the following criteria:

(I) Was previously operating under modified secondary treatment requirements pursuant to Section 301(h) of the Clean Water Act (33 U.S.C. Sec. 1311(h)).

(II) Did vote on July 17, 2002, to not apply for a renewal of the modified secondary treatment requirements.

(III) Is in the process of upgrading its treatment facilities to meet the secondary treatment standards required by Section 301(b)(1)(B) of the Clean Water Act (33 U.S.C. Sec. 1311(b)(1)(B)).

(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, except that the time schedule may not exceed 10 years in length for the upgrade described in subparagraph (B)(iv)(III). 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*) (1) In lieu of assessing penalties pursuant to subdivision (h) or (i), the state board or regional board, with the concurrence of the discharger, may direct a portion of the penalty amount to be expended on a supplemental environmental project in accordance with the enforcement policy of the state board. If the penalty amount exceeds fifteen thousand dollars ($15,000), the portion of the penalty amount that may be directed to be expended on a supplemental environmental project may not exceed fifteen thousand dollars ($15,000) plus 50 percent of the penalty amount that exceed fifteen thousand dollars ($15,000).

(2) For the purposes of this section, a ''supplemental environmental project'' means an environmentally beneficial project that a person agrees to undertake, with the approval of the regional board, that would

not be undertaken in the absence of an enforcement action under this section.

(3) This subdivision applies to the imposition of penalties pursuant to subdivision (h) or (i) on or after January 1, 2003, without regard to the date on which the violation occurs.

(m) 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.

(n) Funds collected pursuant to this section shall be deposited in the State Water Pollution Cleanup and Abatement Account.

(o) (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.

(p) The amendments made to subdivisions (f), (h), (i), and (j) during the second year of the 2001–02 Regular Session apply only to violations that occur on or after January 1, 2003.

SEC. 3. Section 2 of this bill incorporates amendments to Section 13385 of the Water Code proposed by both this bill and AB 1969. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2003, (2) each bill amends Section 13385 of the Water Code, and (3) this bill is enacted after AB 1969, in which case Section 13385 of the Water Code as amended by Section 1 of AB 1969, shall remain operative only until the operative date of this bill, at which

time Section 2 of this bill shall become operative, and Section 1 of this bill shall not become operative.

CHAPTER 996

An act to amend Section 12307 of the Penal Code, relating to destructive devices.

[Approved by Governor September 27, 2002. Filed with Secretary of State September 27, 2002.]

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

SECTION 1. Section 12307 of the Penal Code is amended to read:

12307. The possession of any destructive device in violation of this chapter shall be deemed to be a public nuisance and the Attorney General or district attorney of any city, county, or city and county may bring an action before the superior court to enjoin the possession of any destructive device.

Any destructive device found to be in violation of this chapter shall be surrendered to the Department of Justice, or to the sheriff or chief of police, if the sheriff or chief of police has elected to perform the services required by this section. The department, sheriff, or chief of police shall destroy the destructive device so as to render it unusable and unrepairable as a destructive device, except upon the filing of a certificate with the department by a judge or district attorney stating that the preservation of the destructive device is necessary to serve the ends of justice.

CHAPTER 997

An act to add Section 1749.6 to the Civil Code, relating to gift certificates.

[Approved by Governor September 27, 2002. Filed with Secretary of State September 27, 2002.]

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

SECTION 1. Section 1749.6 is added to the Civil Code, to read:

1749.6. (a) A gift certificate constitutes value held in trust by the issuer of the gift certificate on behalf of the beneficiary of the gift

certificate. The value represented by the gift certificate belongs to the beneficiary, or to the legal representative of the beneficiary to the extent provided by law, and not to the issuer.

(b) An issuer of a gift certificate who is in bankruptcy shall continue to honor a gift certificate issued prior to the date of the bankruptcy filing on the grounds that the value of the gift certificate constitutes trust property of the beneficiary.

(c) (1) This section does not alter the terms of a gift certificate. The terms of a gift certificate may not make its redemption or other use invalid in the event of a bankruptcy.

(2) This section does not require, unless otherwise required by law, the issuer of a gift certificate to:

(A) Redeem a gift certificate for cash.

(B) Replace a gift certificate that has been lost or stolen.

(C) Maintain a separate account for the funds used to purchase the gift certificate.

(d) (1) This section does not create an interest in favor of the beneficiary of the gift certificate in any specific property of the issuer.

(2) This section does not create a fiduciary or quasi-fiduciary relationship between the beneficiary of the gift certificates and the issuer, unless otherwise provided by law.

(3) The issuer of a gift certificate has no obligation to pay interest on the value of the gift certificate held in trust under this section, unless otherwise provided by law.

CHAPTER 998

An act to add Article 7.5 (commencing with Section 17582) is added to Chapter 1 of Part 3 of Division 7 of the Business and Professions Code, relating to automotive products.

[Approved by Governor September 27, 2002. Filed with Secretary of State September 27, 2002.]

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

SECTION 1. Article 7.5 (commencing with Section 17582) is added to Chapter 1 of Part 3 of Division 7 of the Business and Professions Code, to read:

17582. (a) Any engine coolant or antifreeze sold in this state after January 1, 2004, that is manufactured after July 1, 2003, and that contains more than 10 percent ethylene glycol, shall include denatonium benzoate at a minimum of 30 parts per million as a bittering agent within

the product so as to render it unpalatable. Another aversive agent may be used if it meets or exceeds the degree of aversion in test subjects obtained by utilizing the formulation of 30 parts per million of denatonium benzoate in antifreeze. Any manufacturer or packager of a product subject to this section shall maintain a record of the trade name, scientific name, and active ingredients of any bittering agent used pursuant to this chapter. Information and documentation maintained pursuant to this section shall be furnished to any member of the public upon request.

(b) (1) A manufacturer, distributor, recycler, or seller of an automotive product that is required to contain an aversive agent under this section is not liable to any person for any personal injury, death, or property damage that results from the inclusion of denatonium benzoate in ethylene glycol antifreeze.

(2) The limitation on liability provided by this subdivision is only applicable if denatonium benzoate is included in ethylene glycol antifreeze in concentrations mandated by this section.

(3) The limitation on liability provided by this subdivision does not apply if the personal injury, death, or property damage results from willful or wanton misconduct by the manufacturer, distributor, recycler, or seller of the ethylene glycol antifreeze.

(c) This section shall not be construed to apply to any of the following:

(1) The sale of a motor vehicle that contains engine coolant or antifreeze.

(2) Wholesale containers of antifreeze containing 55 gallons or more of the antifreeze.

CHAPTER 999

An act to amend Section 7058.7 of the Business and Professions Code, to amend Section 2929.5 of the Civil Code, to amend Sections 564, 726.5, and 736 of the Code of Civil Procedure, to amend Sections 15399.15 and 15399.15.2 of the Government Code, to amend Sections 25150.1, 25187, 25262, 25281, 25281.5, 25284, 25284.1, 25284.4, 25288, 25291, 25292.4, 25297.1, 25299, 25299.4, 25299.7, 25299.36, 25299.39.2, 25299.39.3, 25299.50.1, 25299.51, 25299.53, 25299.54, 25299.55, 25299.57, 25299.58, 25299.70, 25514.5, 25540, and 33459 of, to amend and renumber Sections 25299.37.1 and 25299.39.1 of, to amend, repeal, and add Section 25404 of, to add Sections 25284.2, 25290.1, 25292.5, 25296.10, 25296.20, 25296.25, 25296.30, 25296.40, 25299.8, 25299.38, and 25404.1.1 to, and to add and repeal Sections

25404.1.2 and 116367 of, to repeal Sections 25299.37, 25299.37.2, 25299.38.1, 25299.39, and 25514.6 of, and to repeal and add Sections 25292.3 and 25395.44 of, the Health and Safety Code, and to amend Sections 13269, 13285, 13323, 13365, and 13391.5 of the Water Code, relating to the environment, and making an appropriation therefor.

[Approved by Governor September 27, 2002. Filed with Secretary of State September 27, 2002.]

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

SECTION 1. Section 7058.7 of the Business and Professions Code is amended to read:

7058.7. (a) No contractor may engage in a removal or remedial action, as defined in subdivision (d), unless the qualifier for the license has passed an approved hazardous substance certification examination.

(b) (1) The Contractors' State License Board, the Division of Occupational Safety and Health of the Department of Industrial Relations, and the Department of Toxic Substances Control shall jointly select an advisory committee, which shall be composed of two representatives of hazardous substance removal workers in California, two general engineering contractors in California, and two representatives of insurance companies in California who shall be selected by the Insurance Commissioner.

(2) The Contractors' State License Board shall develop a written test for the certification of contractors engaged in hazardous substance removal or remedial action, in consultation with the Division of Occupational Safety and Health, the State Water Resources Control Board, the Department of Toxic Substances Control, and the advisory committee.

(c) The Contractors' State License Board may require additional updated approved hazardous substance certification examinations of licensees currently certified based on new public or occupational health and safety information. The Contractors' State License Board, in consultation with the Department of Toxic Substances Control and the State Water Resources Control Board, shall approve other initial and updated hazardous substance certification examinations and determine whether to require an updated certification examination of all current certificate holders.

(d) For purposes of this section ''removal or remedial action'' has the same meaning as found in Chapter 6.8 (commencing with Section 25300) of Division 20 of the Health and Safety Code, if the action requires the contractor to dig into the surface of the earth and remove the dug material and the action is at a site listed pursuant to Section 25356 of the Health and Safety Code or any other site listed as a hazardous

substance release site by the Department of Toxic Substances Control or a site listed on the National Priorities List compiled pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. Sec. 9601 et seq.). ''Removal or remedial action'' does not include asbestos-related work, as defined in Section 6501.8 of the Labor Code, or work related to a hazardous substance spill on a highway.

(e) (1) A contractor may not install or remove an underground storage tank, unless the contractor has passed the hazardous substance certification examination developed pursuant to this section.

(2) A contractor who is not certified may bid on or contract for the installation or removal of an underground tank, if the work is performed by a contractor who is certified pursuant to this section.

(3) For purposes of this subdivision, ''underground storage tank'' has the same meaning as defined in subdivision (y) of Section 25281 of the Health and Safety Code.

SEC. 2. Section 2929.5 of the Civil Code is amended to read:

2929.5. (a) A secured lender may enter and inspect the real property security for the purpose of determining the existence, location, nature, and magnitude of any past or present release or threatened release of any hazardous substance into, onto, beneath, or from the real property security on either of the following:

(1) Upon reasonable belief of the existence of a past or present release or threatened release of any hazardous substance into, onto, beneath, or from the real property security not previously disclosed in writing to the secured lender in conjunction with the making, renewal, or modification of a loan, extension of credit, guaranty, or other obligation involving the borrower.

(2) After the commencement of nonjudicial or judicial foreclosure proceedings against the real property security.

(b) The secured lender shall not abuse the right of entry and inspection or use it to harass the borrower or tenant of the property. Except in case of an emergency, when the borrower or tenant of the property has abandoned the premises, or if it is impracticable to do so, the secured lender shall give the borrower or tenant of the property reasonable notice of the secured lender's intent to enter, and enter only during the borrower's or tenant's normal business hours. Twenty-four hours' notice shall be presumed to be reasonable notice in the absence of evidence to the contrary.

(c) The secured lender shall reimburse the borrower for the cost of repair of any physical injury to the real property security caused by the entry and inspection.

(d) If a secured lender is refused the right of entry and inspection by the borrower or tenant of the property, or is otherwise unable to enter and

inspect the property without a breach of the peace, the secured lender may, upon petition, obtain an order from a court of competent jurisdiction to exercise the secured lender's rights under subdivision (a), and that action shall not constitute an action within the meaning of subdivision (a) of Section 726 of the Code of Civil Procedure.

(e) For purposes of this section:

(1) ''Borrower'' means the trustor under a deed of trust, or a mortgagor under a mortgage, where the deed of trust or mortgage encumbers real property security and secures the performance of the trustor or mortgagor under a loan, extension of credit, guaranty, or other obligation. The term includes any successor-in-interest of the trustor or mortgagor to the real property security before the deed of trust or mortgage has been discharged, reconveyed, or foreclosed upon.

(2) ''Hazardous substance'' includes all of the following:

(A) Any ''hazardous substance'' as defined in subdivision (h) of Section 25281 of the Health and Safety Code.

(B) Any ''waste'' as defined in subdivision (d) of Section 13050 of the Water Code.

(C) Petroleum, including crude oil or any fraction thereof, natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel, or any mixture thereof.

(3) ''Real property security'' means any real property and improvements, other than a separate interest and any related interest in the common area of a residential common interest development, as the terms ''separate interest,'' ''common area,'' and ''common interest development'' are defined in Section 1351, or real property consisting of one acre or less which contains 1 to 15 dwelling units.

(4) ''Release'' means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment, including continuing migration, of hazardous substances into, onto, or through soil, surface water, or groundwater.

(5) ''Secured lender'' means the beneficiary under a deed of trust against the real property security, or the mortgagee under a mortgage against the real property security, and any successor-in-interest of the beneficiary or mortgagee to the deed of trust or mortgage.

SEC. 3. Section 564 of the Code of Civil Procedure is amended to read:

564. (a) A receiver may be appointed, in the manner provided in this chapter, by the court in which an action or proceeding is pending in any case in which the court is empowered by law to appoint a receiver.

(b) A receiver may be appointed by the court in which an action or proceeding is pending, or by a judge thereof, in the following cases:

(1) In an action by a vendor to vacate a fraudulent purchase of property, or by a creditor to subject any property or fund to the creditor's claim, or between partners or others jointly owning or interested in any property or fund, on the application of the plaintiff, or of any party whose right to or interest in the property or fund, or the proceeds thereof, is probable, and where it is shown that the property or fund is in danger of being lost, removed, or materially injured.

(2) In an action by a secured lender for the foreclosure of a deed of trust or mortgage and sale of property upon which there is a lien under a deed of trust or mortgage, where it appears that the property is in danger of being lost, removed, or materially injured, or that the condition of the deed of trust or mortgage has not been performed, and that the property is probably insufficient to discharge the deed of trust or mortgage debt.

(3) After judgment, to carry the judgment into effect.

(4) After judgment, to dispose of the property according to the judgment, or to preserve it during the pendency of an appeal, or pursuant to the Enforcement of Judgments Law (Title 9 (commencing with Section 680.010)), or after sale of real property pursuant to a decree of foreclosure, during the redemption period, to collect, expend, and disburse rents as directed by the court or otherwise provided by law.

(5) Where a corporation has been dissolved, as provided in Section 565.

(6) Where a corporation is insolvent, or in imminent danger of insolvency, or has forfeited its corporate rights.

(7) In an action of unlawful detainer.

(8) At the request of the Public Utilities Commission pursuant to Section 855 or 5259.5 of the Public Utilities Code.

(9) In all other cases where necessary to preserve the property or rights of any party.

(10) At the request of the Office of Statewide Health Planning and Development, or the Attorney General, pursuant to Section 129173 of the Health and Safety Code.

(11) In an action by a secured lender for specific performance of an assignment of rents provision in a deed of trust, mortgage, or separate assignment document. The appointment may be continued after entry of a judgment for specific performance if appropriate to protect, operate, or maintain real property encumbered by a deed of trust or mortgage or to collect rents therefrom while a pending nonjudicial foreclosure under power of sale in a deed of trust or mortgage is being completed.

(12) In a case brought by an assignee under an assignment of leases, rents, issues, or profits pursuant to subdivision (g) of Section 2938 of the Civil Code.

(c) A receiver may be appointed, in the manner provided in this chapter, including, but not limited to, Section 566, by the superior court

in an action brought by a secured lender to enforce the rights provided in Section 2929.5 of the Civil Code, to enable the secured lender to enter and inspect the real property security for the purpose of determining the existence, location, nature, and magnitude of any past or present release or threatened release of any hazardous substance into, onto, beneath, or from the real property security. The secured lender shall not abuse the right of entry and inspection or use it to harass the borrower or tenant of the property. Except in case of an emergency, when the borrower or tenant of the property has abandoned the premises, or if it is impracticable to do so, the secured lender shall give the borrower or tenant of the property reasonable notice of the secured lender's intent to enter and shall enter only during the borrower's or tenant's normal business hours. Twenty-four hours' notice shall be presumed to be reasonable notice in the absence of evidence to the contrary.

(d) Any action by a secured lender to appoint a receiver pursuant to this section shall not constitute an action within the meaning of subdivision (a) of Section 726.

(e) For purposes of this section:

(1) ''Borrower'' means the trustor under a deed of trust, or a mortgagor under a mortgage, where the deed of trust or mortgage encumbers real property security and secures the performance of the trustor or mortgagor under a loan, extension of credit, guaranty, or other obligation. The term includes any successor in interest of the trustor or mortgagor to the real property security before the deed of trust or mortgage has been discharged, reconveyed, or foreclosed upon.

(2) ''Hazardous substance'' means any of the following:

(A) Any ''hazardous substance'' as defined in subdivision (h) of Section 25281 of the Health and Safety Code.

(B) Any ''waste'' as defined in subdivision (d) of Section 13050 of the Water Code.

(C) Petroleum including crude oil or any fraction thereof, natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel, or any mixture thereof.

(3) ''Real property security'' means any real property and improvements, other than a separate interest and any related interest in the common area of a residential common interest development, as the terms ''separate interest,'' ''common area,'' and ''common interest development'' are defined in Section 1351 of the Civil Code, or real property consisting of one acre or less that contains 1 to 15 dwelling units.

(4) ''Release'' means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment, including continuing

migration, of hazardous substances into, onto, or through soil, surface water, or groundwater.

(5) ''Secured lender'' means the beneficiary under a deed of trust against the real property security, or the mortgagee under a mortgage against the real property security, and any successor in interest of the beneficiary or mortgagee to the deed of trust or mortgage.

SEC. 4. Section 726.5 of the Code of Civil Procedure is amended to read:

726.5. (a) Notwithstanding subdivision (a) of Section 726 or any other provision of law, except subdivision (d) of this section, a secured lender may elect between the following where the real property security is environmentally impaired and the borrower's obligations to the secured lender are in default:

(1) (A) Waiver of its lien against (i) any parcel of real property security that is environmentally impaired or is an affected parcel, and (ii) all or any portion of the fixtures and personal property attached to the parcels; and

(B) Exercise of (i) the rights and remedies of an unsecured creditor, including reduction of its claim against the borrower to judgment, and (ii) any other rights and remedies permitted by law.

(2) Exercise of (i) the rights and remedies of a creditor secured by a deed of trust or mortgage and, if applicable, a lien against fixtures or personal property attached to the real property security, and (ii) any other rights and remedies permitted by law.

(b) Before the secured lender may waive its lien against any parcel of real property security pursuant to paragraph (1) of subdivision (a) on the basis of the environmental impairment contemplated by paragraph (3) of subdivision (e), (i) the secured lender shall provide written notice of the default to the borrower, and (ii) the value of the subject real property security shall be established and its environmentally impaired status shall be confirmed by an order of a court of competent jurisdiction in an action brought by the secured lender against the borrower. The complaint for a valuation and confirmation action may include causes of action for a money judgment for all or part of the secured obligation, in which case the waiver of the secured lender's liens under paragraph (1) of subdivision (a) shall result only if and when a final money judgment is obtained against the borrower.

(c) If a secured lender elects the rights and remedies permitted by paragraph (1) of subdivision (a) and the borrower's obligations are also secured by other real property security, fixtures, or personal property, the secured lender shall first foreclose against the additional collateral to the extent required by applicable law in which case the amount of the judgment of the secured lender pursuant to paragraph (1) of subdivision (a) shall be limited to the extent Section 580a or 580d, or subdivision (b)

of Section 726 apply to the foreclosures of additional real property security. The borrower may waive or modify the foreclosure requirements of this subdivision provided that the waiver or modification is in writing and signed by the borrower after default.

(d) Subdivision (a) shall be inapplicable if all of the following are true:

(1) The release or threatened release was not knowingly or negligently caused or contributed to, or knowingly or willfully permitted or acquiesced to, by any of the following:

(A) The borrower or any related party.

(B) Any affiliate or agent of the borrower or any related party.

(2) In conjunction with the making, renewal, or modification of the loan, extension of credit, guaranty, or other obligation secured by the real property security, neither the borrower, any related party, nor any affiliate or agent of either the borrower or any related party had actual knowledge or notice of the release or threatened release, or if a person had knowledge or notice of the release or threatened release, the borrower made written disclosure thereof to the secured lender after the secured lender's written request for information concerning the environmental condition of the real property security, or the secured lender otherwise obtained actual knowledge thereof, prior to the making, renewal, or modification of the obligation.

(e) For purposes of this section:

(1) ''Affected parcel'' means any portion of a parcel of real property security that is (A) contiguous to the environmentally impaired parcel, even if separated by roads, streets, utility easements, or railroad rights-of-way, (B) part of an approved or proposed subdivision within the meaning of Section 66424 of the Government Code, of which the environmentally impaired parcel is also a part, or (C) within 2,000 feet of the environmentally impaired parcel.

(2) ''Borrower'' means the trustor under a deed of trust, or a mortgagor under a mortgage, where the deed of trust or mortgage encumbers real property security and secures the performance of the trustor or mortgagor under a loan, extension of credit, guaranty, or other obligation. The term includes any successor-in-interest of the trustor or mortgagor to the real property security before the deed of trust or mortgage has been discharged, reconveyed, or foreclosed upon.

(3) ''Environmentally impaired'' means that the estimated costs to clean up and remediate a past or present release or threatened release of any hazardous substance into, onto, beneath, or from the real property security, not disclosed in writing to, or otherwise actually known by, the secured lender prior to the making of the loan or extension of credit secured by the real property security, exceeds 25 percent of the higher of the aggregate fair market value of all security for the loan or extension

of credit (A) at the time of the making of the loan or extension of credit, or (B) at the time of the discovery of the release or threatened release by the secured lender. For the purposes of this definition, the estimated cost to clean up and remediate the contamination caused by the release or threatened release shall include only those costs that would be incurred reasonably and in good faith, and fair market value shall be determined without giving consideration to the release or threatened release, and shall be exclusive of the amount of all liens and encumbrances against the security that are senior in priority to the lien of the secured lender. Notwithstanding the foregoing, the real property security for any loan or extension of credit secured by a single parcel of real property which is included in the National Priorities List pursuant to Section 9605 of Title 42 of the United States Code, or in any list published by the Department of Toxic Substances Control pursuant to subdivision (b) of Section 25356 of the Health and Safety Code, shall be deemed to be environmentally impaired.

(4) ''Hazardous substance'' means any of the following:

(A) Any ''hazardous substance'' as defined in subdivision (h) of Section 25281 of the Health and Safety Code.

(B) Any ''waste'' as defined in subdivision (d) of Section 13050 of the Water Code.

(C) Petroleum, including crude oil or any fraction thereof, natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel, or any mixture thereof.

(5) ''Real property security'' means any real property and improvements, other than a separate interest and any related interest in the common area of a residential common interest development, as the terms ''separate interest,'' ''common area,'' and ''common interest development'' are defined in Section 1351 of the Civil Code, or real property which contains only 1 to 15 dwelling units, which in either case (A) is solely used (i) for residential purposes, or (ii) if reasonably contemplated by the parties to the deed of trust or mortgage, for residential purposes as well as limited agricultural or commercial purposes incidental thereto, and (B) is the subject of an issued certificate of occupancy unless the dwelling is to be owned and occupied by the borrower.

(6) ''Related party'' means any person who shares an ownership interest with the borrower in the real property security, or is a partner or joint venturer with the borrower in a partnership or joint venture, the business of which includes the acquisition, development, use, lease, or sale of the real property security.

(7) ''Release'' means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment, including continuing

migration, of hazardous substances into, onto, or through soil, surface water, or groundwater. The term does not include actions directly relating to the incorporation in a lawful manner of building materials into a permanent improvement to the real property security.

(8) ''Secured lender'' means the beneficiary under a deed of trust against the real property security, or the mortgagee under a mortgage against the real property security, and any successor-in-interest of the beneficiary or mortgagee to the deed of trust or mortgage.

(f) This section shall not be construed to invalidate or otherwise affect in any manner any rights or obligations arising under contract in connection with a loan or extension of credit, including, without limitation, provisions limiting recourse.

(g) This section shall only apply to loans, extensions of credit, guaranties, or other obligations secured by real property security made, renewed, or modified on or after January 1, 1992.

SEC. 5. Section 736 of the Code of Civil Procedure is amended to read:

736. (a) Notwithstanding any other provision of law, a secured lender may bring an action for breach of contract against a borrower for breach of any environmental provision made by the borrower relating to the real property security, for the recovery of damages, and for the enforcement of the environmental provision, and that action or failure to foreclose first against collateral shall not constitute an action within the meaning of subdivision (a) of Section 726, or constitute a money judgment for a deficiency or a deficiency judgment within the meaning of Section 580a, 580b, or 580d, or subdivision (b) of Section 726. No injunction for the enforcement of an environmental provision may be issued after (1) the obligation secured by the real property security has been fully satisfied, or (2) all of the borrower's rights, title, and interest in and to the real property security has been transferred in a bona fide transaction to an unaffiliated third party for fair value.

(b) The damages a secured lender may recover pursuant to subdivision (a) shall be limited to reimbursement or indemnification of the following:

(1) If not pursuant to an order of any federal, state, or local governmental agency relating to the cleanup, remediation, or other response action required by applicable law, those costs relating to a reasonable and good faith cleanup, remediation, or other response action concerning a release or threatened release of hazardous substances which is anticipated by the environmental provision.

(2) If pursuant to an order of any federal, state, or local governmental agency relating to the cleanup, remediation, or other response action required by applicable law which is anticipated by the environmental provision, all amounts reasonably advanced in good faith by the secured

lender in connection therewith, provided that the secured lender negotiated, or attempted to negotiate, in good faith to minimize the amounts it was required to advance under the order.

(3) Indemnification against all liabilities of the secured lender to any third party relating to the breach and not arising from acts, omissions, or other conduct which occur after the borrower is no longer an owner or operator of the real property security, and provided the secured lender is not responsible for the environmentally impaired condition of the real property security in accordance with the standards set forth in subdivision (d) of Section 726.5. For purposes of this paragraph, the term ''owner or operator'' means those persons described in Section 101(20)(A) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. Sec. 9601, et seq.).

(4) Attorneys' fees and costs incurred by the secured lender relating to the breach.

The damages a secured lender may recover pursuant to subdivision (a) shall not include (i) any part of the principal amount or accrued interest of the secured obligation, except for any amounts advanced by the secured lender to cure or mitigate the breach of the environmental provision that are added to the principal amount, and contractual interest thereon, or (ii) amounts which relate to a release which was knowingly permitted, caused, or contributed to by the secured lender or any affiliate or agent of the secured lender.

(c) A secured lender may not recover damages against a borrower pursuant to subdivision (a) for amounts advanced or obligations incurred for the cleanup or other remediation of real property security, and related attorneys' fees and costs, if all of the following are true:

(1) The original principal amount of, or commitment for, the loan or other obligation secured by the real property security did not exceed two hundred thousand dollars ($200,000).

(2) In conjunction with the secured lender's acceptance of the environmental provision, the secured lender agreed in writing to accept the real property security on the basis of a completed environmental site assessment and other relevant information from the borrower.

(3) The borrower did not permit, cause, or contribute to the release or threatened release.

(4) The deed of trust or mortgage covering the real property security has not been discharged, reconveyed, or foreclosed upon.

(d) This section is not intended to establish, abrogate, modify, limit, or otherwise affect any cause of action other than that provided by subdivision (a) that a secured lender may have against a borrower under an environmental provision.

(e) This section shall apply only to environmental provisions contracted in conjunction with loans, extensions of credit, guaranties, or other obligations made, renewed, or modified on or after January 1, 1992. Notwithstanding the foregoing, this section shall not be construed to validate, invalidate, or otherwise affect in any manner the rights and obligations of the parties to, or the enforcement of, environmental provisions contracted before January 1, 1992.

(f) For purposes of this section:

(1) ''Borrower'' means the trustor under a deed of trust, or a mortgagor under a mortgage, where the deed of trust or mortgage encumbers real property security and secures the performance of the trustor or mortgagor under a loan, extension of credit, guaranty, or other obligation. The term includes any successor-in-interest of the trustor or mortgagor to the real property security before the deed of trust or mortgage has been discharged, reconveyed, or foreclosed upon.

(2) ''Environmental provision'' means any written representation, warranty, indemnity, promise, or covenant relating to the existence, location, nature, use, generation, manufacture, storage, disposal, handling, or past, present, or future release or threatened release, of any hazardous substance into, onto, beneath, or from the real property security, or to past, present, or future compliance with any law relating thereto, made by a borrower in conjunction with the making, renewal, or modification of a loan, extension of credit, guaranty, or other obligation involving the borrower, whether or not the representation, warranty, indemnity, promise, or covenant is or was contained in or secured by the deed of trust or mortgage, and whether or not the deed of trust or mortgage has been discharged, reconveyed, or foreclosed upon.

(3) ''Hazardous substance'' means any of the following:

(A) Any ''hazardous substance'' as defined in subdivision (h) of Section 25281 of the Health and Safety Code.

(B) Any ''waste'' as defined in subdivision (d) of Section 13050 of the Water Code.

(C) Petroleum, including crude oil or any fraction thereof, natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel, or any mixture thereof.

(4) ''Real property security'' means any real property and improvements, other than a separate interest and any related interest in the common area of a residential common interest development, as the terms ''separate interest,'' ''common area,'' and ''common interest development'' are defined in Section 1351 of the Civil Code, or real property which contains only 1 to 15 dwelling units, which in either case (A) is solely used (i) for residential purposes, or (ii) if reasonably contemplated by the parties to the deed of trust or mortgage, for residential purposes as well as limited agricultural or commercial

purposes incidental thereto, and (B) is the subject of an issued certificate of occupancy unless the dwelling is to be owned and occupied by the borrower.

(5) ''Release'' means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment, including continuing migration, of hazardous substances into, onto, or through soil, surface water, or groundwater. The term does not include actions directly relating to the incorporation in a lawful manner of building materials into a permanent improvement to the real property security.

(6) ''Secured lender'' means the beneficiary under a deed of trust against the real property security, or the mortgagee under a mortgage against the real property security, and any successor-in-interest of the beneficiary or mortgagee to the deed of trust or mortgage.

SEC. 6. Section 15399.15 of the Government Code is amended to read:

15399.15. (a) The agency shall make grant funds available from the Petroleum Underground Storage Tank Financing Account to eligible grant applicants who meet all of the following eligibility requirements:

(1) The grant applicant is a small business, pursuant to the following requirements:

(A) The grant applicant meets the conditions for a small business as defined in Section 632 of Title 15 of the United States Code, and in the federal regulations adopted to implement that section, as specified in Part 121 (commencing with Section 121.101) of Chapter I of Title 13 of the Code of Federal Regulations.

(B) The grant applicant employs fewer than 20 full-time and part-time employees, is independently owned and operated, and is not dominant in its field of operation.

(2) The principal office of the grant applicant is domiciled in the state, and the officers of the grant applicant are domiciled in this state.

(3) The grant applicant, the applicant's family, or an affiliated entity, has owned or operated the project tank since January 1, 1997.

(4) All tanks owned and operated by the grant applicant are subject to compliance with Chapter 6.7 (commencing with Section 25280) of Division 20 of the Health and Safety Code, and the regulations adopted pursuant to that chapter.

(5) The facility where the project tank is located has sold at retail less than 900,000 gallons of gasoline annually for each of the two years preceding the submission of the grant application. The numbers of gallons sold shall be based upon taxable sales figures provided to the State Board of Equalization for that facility.

(6) The grant applicant owns or operates a tank that is in compliance with Section 25290.1 or 25291 of the Health and Safety Code, or

subdivisions (d) and (e) of Section 25292 of the Health and Safety Code, and the regulations adopted to implement those sections.

(7) The facility where the project tank is located was legally in business retailing gasoline after January 1, 1999.

(b) Grant funds may only be used to pay the costs necessary to comply with the requirements of Section 25284.1, 25292.4, or 25292.5 of the Health and Safety Code.

(c) If the total amount of grant requests by eligible grant applicants to the agency pursuant to this section exceed, or are anticipated to exceed, the amount in the Petroleum Underground Storage Tank Financing Account, the agency may adopt a priority ranking list to award grants based upon the level of demonstrated financial hardship of the eligible grant applicant, or the relative impact upon the local community where the project tank is located if the claim is denied.

SEC. 7. Section 15399.15.2 of the Government Code is amended to read:

15399.15.2. (a) The minimum amount that the agency may grant an applicant is three thousand dollars ($3,000), and the maximum amount that the agency may grant an applicant is fifty thousand dollars ($50,000).

(b) Grant funds may be used to finance up to 100 percent of the costs necessary to comply with Sections 25284.1, 25292.4, and 25292.5 of the Health and Safety Code. No person or entity is eligible to receive more than fifty thousand dollars ($50,000) in grant funds pursuant to this chapter.

SEC. 8. Section 25150.1 of the Health and Safety Code is amended to read:

25150.1. The requirements in Sections 25290.1, 25291, and 25292 apply to the construction, operation, maintenance, monitoring, and testing of underground storage tanks, as defined in subdivision (y) of Section 25281, that are required to obtain hazardous waste facilities permits from the department. The department shall adopt regulations implementing the requirements of Sections 25290.1, 25291, and 25292, for regulating the construction, operation, maintenance, monitoring, and testing of underground storage tanks used for the storage of hazardous wastes that are necessary to protect against hazards to the public health, domestic livestock, wildlife, or the environment.

SEC. 9. Section 25187 of the Health and Safety Code is amended to read:

25187. (a) (1) The department or a unified program agency, in accordance with subdivision (*l*), may issue an order requiring that the violation be corrected and imposing an administrative penalty, for any violation of this chapter or any permit, rule, regulation, standard, or requirement issued or adopted pursuant to this chapter, whenever the

department or Unified Program Agency determines that a person has violated, is in violation of, or threatens, as defined in subdivision (e) of Section 13304 of the Water Code, to violate, this chapter or Chapter 6.8 (commencing with Section 25300), or any permit, rule, regulation, standard, or requirement issued or adopted pursuant to this chapter or Chapter 6.8 (commencing with Section 25300).

(2) In an order proposing a penalty pursuant to this section, the department or Unified Program Agency shall take into consideration the nature, circumstances, extent, and gravity of the violation, the violator's past and present efforts to prevent, abate, or clean up conditions posing a threat to the public health or safety or the environment, the violator's ability to pay the proposed penalty, and the prophylactic effect that the imposition of the proposed penalty would have on both the violator and the regulated community as a whole.

(b) The department or a unified program agency, in accordance with subdivision (*l*), may issue an order requiring corrective action whenever the department or Unified Program Agency determines that there is or has been a release, as defined in Chapter 6.8 (commencing with Section 25300), of hazardous waste or constituents into the environment from a hazardous waste facility.

(1) In the case of a release of hazardous waste or constituents into the environment from a hazardous waste facility that is required to obtain a permit pursuant to Article 9 (commencing with Section 25200), the department shall pursue the remedies available under this chapter, including the issuance of an order for corrective action pursuant to this section, before using the legal remedies available pursuant to Chapter 6.8 (commencing with Section 25300), except in any of the following circumstances:

(A) Where the person who is responsible for the release voluntarily requests in writing that the department issue an order to that person to take corrective action pursuant to Chapter 6.8 (commencing with Section 25300).

(B) Where the person who is responsible for the release is unable to pay for the cost of corrective action to address the release. For purposes of this subparagraph, the inability of a person to pay for the cost of corrective action shall be determined in accordance with the policies of the Environmental Protection Agency for the implementation of Section 9605 of Title 42 of the United States Code.

(C) Where the person responsible for the release is unwilling to perform corrective action to address the release. For purposes of this subparagraph, the unwillingness of a person to take corrective action shall be determined in accordance with the policies of the Environmental Protection Agency for the implementation of Section 9605 of Title 42 of the United States Code.

(D) Where the release is part of a regional or multisite groundwater contamination problem that cannot, in its entirety, be addressed using the legal remedies available pursuant to this chapter and for which other releases that are part of the regional or multisite groundwater contamination problem are being addressed using the legal remedies available pursuant to Chapter 6.8 (commencing with Section 25300).

(E) Where an order for corrective action has already been issued against the person responsible for the release, or the department and the person responsible for the release have, prior to January 1, 1996, entered into an agreement to address the required cleanup of the release pursuant to Chapter 6.8 (commencing with Section 25300).

(F) Where the hazardous waste facility is owned or operated by the federal government.

(2) The order shall include a requirement that the person take corrective action with respect to the release of hazardous waste or constituents, abate the effects thereof, and take any other necessary remedial action.

(3) If the order requires corrective action at a hazardous waste facility, the order shall require that corrective action be taken beyond the facility boundary, where necessary to protect human health or the environment.

(4) The order shall incorporate, as a condition of the order, any applicable waste discharge requirements issued by the State Water Resources Control Board or a California regional water quality control board, and shall be consistent with all applicable water quality control plans adopted pursuant to Section 13170 of the Water Code and Article 3 (commencing with Section 13240) of Chapter 4 of Division 7 of the Water Code and state policies for water quality control adopted pursuant to Article 3 (commencing with Section 13140) of Chapter 3 of Division 7 of the Water Code existing at the time of the issuance of the order, to the extent that the department or Unified Program Agency determines that those plans and policies are not less stringent than this chapter and regulations adopted pursuant to this chapter. The order may include any more stringent requirement that the department or Unified Program Agency determines is necessary or appropriate to protect water quality.

(5) Persons who are subject to an order pursuant to this subdivision include present and prior owners, lessees, or operators of the property where the hazardous waste is located, present or past generators, storers, treaters, transporters, disposers, and handlers of hazardous waste, and persons who arrange, or have arranged, by contract or other agreement, to store, treat, transport, dispose of, or otherwise handle hazardous waste.

(6) For purposes of this subdivision, ''hazardous waste facility'' includes the entire site that is under the control of an owner or operator engaged in the management of hazardous waste.

(c) Any order issued pursuant to this section shall be served by personal service or certified mail and shall inform the person so served of the right to a hearing. If the Unified Program Agency issues the order pursuant to this section, the order shall state whether the hearing procedure specified in paragraph (2) of subdivision (f) may be requested by the person receiving the order.

(d) Any person served with an order pursuant to this section who has been unable to resolve any violation or deficiency on an informal basis with the department or Unified Program Agency may, within 15 days after service of the order, request a hearing pursuant to subdivision (e) or (f) by filing with the department or Unified Program Agency a notice of defense. The notice shall be filed with the office that issued the order. A notice of defense shall be deemed filed within the 15-day period provided by this subdivision if it is postmarked within that 15-day period. If no notice of defense is filed within the time limits provided by this subdivision, the order shall become final.

(e) Any hearing requested on an order issued by the department shall be conducted within 90 days after receipt of the notice of defense by an administrative law judge of the Office of Administrative Hearings of the Department of General Services in accordance with Chapter 4.5 (commencing with Section 11400) of Part 1 of Division 3 of Title 2 of the Government Code, and the department shall have all the authority granted to an agency by those provisions.

(f) Except as provided in subparagraph (B) of paragraph (2), a person requesting a hearing on an order issued by a unified program agency may select the hearing process specified in either paragraph (1) or (2) in the notice of defense filed with the Unified Program Agency pursuant to subdivision (d). Within 90 days of receipt of the notice of defense by the Unified Program Agency, the hearing shall be conducted using one of the following procedures:

(1) An administrative law judge of the Office of Administrative Hearings of the Department of General Services shall conduct the hearing in accordance with Chapter 4.5 (commencing with Section 11400) of Part 1 of Division 3 of Title 2 of the Government Code.

(2) (A) A hearing officer designated by the Unified Program Agency shall conduct the hearing in accordance with Chapter 4.5 (commencing with Section 11400) of Part 1 of Division 3 of Title 2 of the Government Code, and the Unified Program Agency shall have all the authority granted to an agency by those provisions. When a hearing is conducted by a unified program agency pursuant to this paragraph, the Unified Program Agency shall, within 60 days of the hearing, issue a decision.

(B) A person requesting a hearing on an order issued by a unified program agency may select the hearing process specified in this paragraph in a notice of defense filed pursuant to subdivision (d) only

if the Unified Program Agency has, as of the date the order is issued pursuant to subdivision (c), selected a designated hearing officer and established a program for conducting a hearing in accordance with this paragraph.

(g) The hearing decision issued pursuant to subdivision (f) shall be effective and final upon issuance. Copies of the decision shall be served by personal service or by certified mail upon the party served with the order and upon other persons who appeared at the hearing and requested a copy.

(h) Any provision of an order issued under this section, except the imposition of an administrative penalty, shall take effect upon issuance by the department or Unified Program Agency if the department or Unified Program Agency finds that the violation or violations of law associated with that provision may pose an imminent and substantial endangerment to the public health or safety or the environment, and a request for a hearing shall not stay the effect of that provision of the order pending a hearing decision. However, if the department or Unified Program Agency determines that any or all provisions of the order are so related that the public health or safety or the environment can be protected only by immediate compliance with the order as a whole, then the order as a whole, except the imposition of an administrative penalty, shall take effect upon issuance by the department or Unified Program Agency. A request for a hearing shall not stay the effect of the order as a whole pending a hearing decision.

(i) A decision issued pursuant to this section may be reviewed by the court pursuant to Section 11523 of the Government Code. In all proceedings pursuant to this section, the court shall uphold the decision of the department or Unified Program Agency if the decision is based upon substantial evidence in the whole record. The filing of a petition for writ of mandate shall not stay any action required pursuant to this chapter or the accrual of any penalties assessed pursuant to this chapter. This subdivision does not prohibit the court from granting any appropriate relief within its jurisdiction.

(j) All administrative penalties collected from actions brought by the department pursuant to this section shall be placed in a separate subaccount in the Toxic Substances Control Account and shall be available only for transfer to the Site Remediation Account or the Expedited Site Remediation Trust Fund and for expenditure by the department upon appropriation by the Legislature.

(k) All administrative penalties collected from an action brought by a unified program agency pursuant to this section shall be paid to the Unified Program Agency that imposed the penalty, and shall be deposited into a special account that shall be expended to fund the

activities of the Unified Program Agency in enforcing this chapter pursuant to Section 25180.

(*l*) The authority granted under this section to a unified program agency is limited to both of the following:

(1) The issuance of orders to impose penalties and to correct violations of the requirements of this chapter and its implementing regulations, only when the violations are violations of requirements applicable to hazardous waste generators and persons operating pursuant to a permit-by-rule, conditional authorization, or conditional exemption, when the violations occur at a unified program facility within the jurisdiction of the CUPA.

(2) The issuance of orders to require corrective action when there has been a release of hazardous waste or constituents only when the Unified Program Agency is authorized to do so pursuant to Section 25404.1.

(m) The CUPA shall annually submit a summary report to the department on the status of orders issued by the unified program agencies under this section and Section 25187.1.

(n) The CUPA shall consult with the district attorney for the county on the development of policies to be followed in exercising the authority delegated pursuant to this section and Section 25187.1, as they relate to the authority of unified program agencies to issue orders.

(o) The CUPA shall arrange to have appropriate legal representation in administrative hearings that are conducted by an administrative law judge of the Office of Administrative Hearings of the Department of General Services, and when a decision issued pursuant to this section is appealed to the superior court.

(p) The department may adopt regulations to implement this section and paragraph (2) of subdivision (a) of Section 25187.1 as they relate to the authority of unified program agencies to issue orders. The regulations shall include, but not be limited to, all of the following requirements:

(1) Provisions to ensure coordinated and consistent application of this section and Section 25187.1 when both the department and the Unified Program Agency have or will be issuing orders under one or both of these sections at the same facility.

(2) Provisions to ensure that the enforcement authority granted to the unified program agencies will be exercised consistently throughout the state.

(3) Minimum training requirements for staff of the Unified Program Agency relative to this section and Section 25187.1.

(4) Procedures to be followed by the department to rescind the authority granted to a unified program agency under this section and Section 25187.1, if the department finds that the Unified Program Agency is not exercising that authority in a manner consistent with this

chapter and Chapter 6.11 (commencing with Section 25404) and the regulations adopted pursuant thereto.

(q) Except for an enforcement action taken pursuant to this chapter or Chapter 6.8 (commencing with Section 25300), this section does not otherwise affect the authority of a local agency to take any action under any other provision of law.

SEC. 10. Section 25262 of the Health and Safety Code is amended to read:

25262. (a) A responsible party for a hazardous materials release site may request the committee at any time to designate an administering agency to oversee a site investigation and remedial action at the site. The committee shall designate an administering agency as responsible for the site within 45 days of the date the request is received. A request to designate an administering agency may be denied only if the committee makes one of the following findings:

(1) No single agency in state or local government has the expertise needed to adequately oversee a site investigation and remedial action at the site.

(2) Designating an administering agency will have the effect of reversing a regulatory or enforcement action initiated by an agency that has jurisdiction over the site, a facility on the site, or an activity at the site.

(3) Designating an administering agency will prevent a regulatory or enforcement action required by federal law or regulations.

(4) The administering agency and the responsible party are local agencies formed, in whole or in part, by the same political subdivision.

(b) A responsible party who requests the designation of an administering agency for a hazardous materials release site shall provide the committee with a brief description of the site, an analysis of the known or suspected nature of the release or threatened release that is the subject of required site investigation or remedial action, a description of the type of facility from which the release occurred or the type of activity that caused the release, a specification of the regulatory or enforcement actions that have been taken, or are pending, with respect to the release, and a statement of which agency the responsible party believes should be designated as administering agency for the site.

(c) (1) The committee shall take all of the following factors into account in determining which agency to designate as administering agency for a site:

(A) The type of release that is the subject of site investigation and remedial action.

(B) The nature of the threat that the release poses to human health and safety or to the environment.

(C) The source of the release, the type of facility or activity from which the release occurred, the regulatory programs that govern the facility or activity involved, and the agency or agencies that administer those regulatory programs.

(D) The regulatory history of the site, the types of regulatory actions or enforcement actions that have been taken with respect to the site or the facility or activity from which the release occurred, and the experience and involvement that various agencies have had with the site.

(E) The capabilities and expertise of the agencies that are candidates for designation as the administering agency for the site and the degree to which those capabilities and that expertise are applicable to the type of release at the site, the nature of the threat that the release poses to health and safety or the environment and the probable remedial measures that will be required.

(2) After weighing the factors described in paragraph (1) as they apply to the site, the committee shall use the criteria specified in subparagraphs (A), (B), (C), and (D) as guidelines for designating the administering agency. If more than one of the criteria apply to the site, the committee shall use its best judgment, taking into account the known facts concerning the hazardous materials release at the site and its regulatory history, in determining which agency may best serve as the administering agency. The criteria are as follows:

(A) The administering agency shall be the Department of Toxic Substances Control if one of the following applies:

(i) The department has issued an order, or otherwise initiated action, with respect to the release at the site pursuant to Section 25355, 25355.5, or 25358.3.

(ii) The department has issued an order for corrective action at the site pursuant to Section 25187.

(iii) The source of the release is a facility or hazardous waste management unit or an activity that is, or was, regulated by the department pursuant to Chapter 6.5 (commencing with Section 25100).

(iv) The department is conducting, or has conducted, oversight of the site investigation and remedial action at the site at the request of the responsible party.

(B) The administering agency shall be the California regional water quality control board for the region in which the site is located, if one of the following applies:

(i) The California regional water quality control board has issued a cease and desist order pursuant to Section 13301, or a cleanup and abatement order pursuant to Section 13304 of the Water Code in connection with the release at the site.

(ii) The source of the release is a facility or an activity that is subject to waste discharge requirements issued by the California regional water

quality control board pursuant to Section 13263 of the Water Code or that is regulated by the California regional water quality control board pursuant to Article 5.5 (commencing with Section 25159.10) of, or Article 9.5 (commencing with Section 25208) of, Chapter 6.5, or pursuant to Chapter 6.67 (commencing with Section 25270).

(iii) The California regional water quality control board has jurisdiction over the site pursuant to Chapter 5.6 (commencing with Section 13390) of Division 7 of the Water Code.

(C) The administering agency shall be the Department of Fish and Game if the release has polluted or contaminated the waters of the state and the department has taken action against the responsible party pursuant to Section 2014 or 12015 of, or Article 1 (commencing with Section 5650) of Chapter 2 of Part 1 of Division 6 of, the Fish and Game Code, subsection (f) of Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, (42 U.S.C. Sec. 9607 (f)), or Section 311 of the Federal Water Pollution Act, as amended (33 U.S.C. Sec. 1321).

(D) The administering agency shall be a local agency if any one of the following circumstances is applicable:

(i) The source of the release at the site is an underground storage tank, as defined in subdivision (y) of Section 25281, the local agency is the agency described in subdivision (i) of Section 25281, and there is no evidence of any extensive groundwater contamination at the site.

(ii) The local agency has accepted responsibility for overseeing the site investigation or remedial action at the site and a state agency is not involved.

(iii) The local agency has agreed to oversee the site investigation or remedial action at the site and is certified, or has been approved, by a state agency to conduct that oversight.

(d) A responsible party for a hazardous materials release site may request the designation of an administering agency for the site pursuant to this section only once. The action of the committee on the request is a final action and is not subject to further administrative or judicial review.

SEC. 11. Section 25281 of the Health and Safety Code is amended to read:

25281. For purposes of this chapter, the following definitions apply:

(a) ''Automatic line leak detector'' means any method of leak detection, as determined in regulations adopted by the board, that alerts the owner or operator of an underground storage tank to the presence of a leak. ''Automatic line leak detector'' includes, but is not limited to, any device or mechanism that alerts the owner or operator of an underground storage tank to the presence of a leak by restricting or shutting off the flow of a hazardous substance through piping, or by triggering an

audible or visual alarm, and that detects leaks of three gallons or more per hour at 10 pounds per square inch line pressure within one hour.

(b) ''Board'' means the State Water Resources Control Board. ''Regional board'' means a California regional water quality control board.

(c) ''Compatible'' means the ability of two or more substances to maintain their respective physical and chemical properties upon contact with one another for the design life of the tank system under conditions likely to be encountered in the tank system.

(d) (1) ''Certified Unified Program Agency'' or ''CUPA'' means the agency certified by the Secretary for Environmental Protection to implement the unified program specified in Chapter 6.11 (commencing with Section 25404) within a jurisdiction.

(2) ''Participating Agency'' or ''PA'' means an agency that has a written agreement with the CUPA pursuant to subdivision (d) of Section 25404.3, and is approved by the secretary to implement or enforce the unified program element specified in paragraph (3) of subdivision (c) of Section 25404, in accordance with Sections 25404.1 and 25404.2.

(3) ''Unified Program Agency'' or ''UPA'' means the CUPA, or its participating agencies to the extent each PA has been designated by the CUPA, pursuant to a written agreement, to implement or enforce the unified program element specified in paragraph (3) of subdivision (c) of Section 25404. For purposes of this chapter, a UPA has the responsibility and authority, to the extent provided by this chapter and Sections 25404.1 and 25404.2, to implement and enforce only those requirements of this chapter listed in paragraph (3) of subdivision (c) of Section 25404 and the regulations adopted to implement those requirements. After a CUPA has been certified by the secretary, the UPA shall be the only local agency authorized to enforce the requirements of this chapter listed in paragraph (3) of subdivision (c) of Section 25404 within the jurisdiction of the CUPA. This paragraph shall not be construed to limit the authority or responsibility granted to the board and the regional boards by this chapter to implement and enforce this chapter and the regulations adopted pursuant to this chapter.

(e) ''Department'' means the Department of Toxic Substances Control.

(f) ''Facility'' means any one, or combination of, underground storage tanks used by a single business entity at a single location or site.

(g) ''Federal act'' means Subchapter IX (commencing with Section 6991) of Chapter 82 of Title 42 of the United States Code, as added by the Hazardous and Solid Waste Amendments of 1984 (P.L. 98-616), or as it may subsequently be amended or supplemented.

(h) ''Hazardous substance'' means either of the following:

(1) All of the following liquid and solid substances, unless the department, in consultation with the board, determines that the substance could not adversely affect the quality of the waters of the state:

(A) Substances on the list prepared by the Director of Industrial Relations pursuant to Section 6382 of the Labor Code.

(B) Hazardous substances, as defined in Section 25316.

(C) Any substance or material that is classified by the National Fire Protection Association (NFPA) as a flammable liquid, a class II combustible liquid, or a class III-A combustible liquid.

(2) Any regulated substance, as defined in subsection (2) of Section 6991 of Title 42 of the United States Code, as that section reads on January 1, 1989, or as it may subsequently be amended or supplemented.

(i) ''Local agency'' means the local agency authorized, pursuant to Section 25283, to implement this chapter.

(j) ''Operator'' means any person in control of, or having daily responsibility for, the daily operation of an underground storage tank system.

(k) ''Owner'' means the owner of an underground storage tank.

(*l*) ''Person'' means an individual, trust, firm, joint stock company, corporation, including a government corporation, partnership, limited liability company, or association. ''Person'' also includes any city, county, district, the state, another state of the United States, any department or agency of this state or another state, or the United States to the extent authorized by federal law.

(m) ''Pipe'' means any pipeline or system of pipelines that is used in connection with the storage of hazardous substances and that is not intended to transport hazardous substances in interstate or intrastate commerce or to transfer hazardous materials in bulk to or from a marine vessel.

(n) ''Primary containment'' means the first level of containment, such as the portion of a tank that comes into immediate contact on its inner surface with the hazardous substance being contained.

(o) ''Product tight'' means impervious to the substance that is contained, or is to be contained, so as to prevent the seepage of the substance from the containment.

(p) ''Release'' means any spilling, leaking, emitting, discharging, escaping, leaching, or disposing from an underground storage tank into or on the waters of the state, the land, or the subsurface soils.

(q) ''Secondary containment'' means the level of containment external to, and separate from, the primary containment.

(r) ''Single walled'' means construction with walls made of only one thickness of material. For the purposes of this chapter, laminated, coated, or clad materials are considered single walled.

(s) ''Special inspector'' means a professional engineer, registered pursuant to Chapter 7 (commencing with Section 6700) of Division 3 of the Business and Professions Code, who is qualified to attest, at a minimum, to structural soundness, seismic safety, the compatibility of construction materials with contents, cathodic protection, and the mechanical compatibility of the structural elements of underground storage tanks.

(t) ''Storage'' or ''store'' means the containment, handling, or treatment of hazardous substances, either on a temporary basis or for a period of years. ''Storage'' or ''store'' does not include the storage of hazardous wastes in an underground storage tank if the person operating the tank has been issued a hazardous waste facilities permit by the department pursuant to Section 25200 or granted interim status under Section 25200.5.

(u) ''Tank'' means a stationary device designed to contain an accumulation of hazardous substances which is constructed primarily of nonearthen materials, including, but not limited to, wood, concrete, steel, or plastic that provides structural support.

(v) ''Tank integrity test'' means a test method capable of detecting an unauthorized release from an underground storage tank consistent with the minimum standards adopted by the board.

(w) ''Tank tester'' means an individual who performs tank integrity tests on underground storage tanks.

(x) ''Unauthorized release'' means any release of any hazardous substance that does not conform to this chapter, including, but not limited to, an unauthorized release specified in Section 25295.5, unless this release is authorized by the board or a regional board pursuant to Division 7 (commencing with Section 13000) of the Water Code.

(y) (1) ''Underground storage tank'' means any one or combination of tanks, including pipes connected thereto, that is used for the storage of hazardous substances and that is substantially or totally beneath the surface of the ground. ''Underground storage tank'' does not include any of the following:

(A) A tank with a capacity of 1,100 gallons or less that is located on a farm and that stores motor vehicle fuel used primarily for agricultural purposes and not for resale.

(B) A tank that is located on a farm or at the residence of a person, that has a capacity of 1,100 gallons or less, and that stores home heating oil for consumptive use on the premises where stored.

(C) Structures, such as sumps, separators, storm drains, catch basins, oil field gathering lines, refinery pipelines, lagoons, evaporation ponds, well cellars, separation sumps, lined and unlined pits, sumps and lagoons. A sump that is a part of a monitoring system required under Section 25290.1, 25291, or 25292 and sumps or other structures defined

as underground storage tanks under the federal act are not exempted by this subparagraph.

(D) A tank holding hydraulic fluid for a closed loop mechanical system that uses compressed air or hydraulic fluid to operate lifts, elevators, and other similar devices.

(2) Structures identified in subparagraphs (C) and (D) of paragraph (1) may be regulated by the board and any regional board pursuant to the Porter-Cologne Water Quality Control Act (Division 7 (commencing with Section 13000) of the Water Code) to ensure that they do not pose a threat to water quality.

(z) ''Underground tank system'' or ''tank system'' means an underground storage tank, connected piping, ancillary equipment, and containment system, if any.

(aa) (1) ''Unified program facility'' means all contiguous land and structures, other appurtenances, and improvements on the land that are subject to the requirements of paragraph (3) of subdivision (c) of Section 25404.

(2) ''Unified program facility permit'' means a permit issued pursuant to Chapter 6.11 (commencing with Section 25404), and that encompasses the permitting requirements of Section 25284.

(3) ''Permit'' means a permit issued pursuant to Section 25284 or a unified program facility permit as defined in paragraph (2).

SEC. 12. Section 25281.5 of the Health and Safety Code is amended to read:

25281.5. (a) Notwithstanding subdivision (m) of Section 25281, for purposes of this chapter ''pipe'' means all parts of any pipeline or system of pipelines, used in connection with the storage of hazardous substances, including, but not limited to, valves and other appurtenances connected to the pipe, pumping units, fabricated assemblies associated with pumping units, and metering and delivery stations and fabricated assemblies therein, but does not include any of the following:

(1) An interstate pipeline subject to Part 195 (commencing with Section 195.0) of Subchapter D of Chapter 1 of Title 49 of the Code of Federal Regulations.

(2) An intrastate pipeline subject to Chapter 5.5 (commencing with Section 51010) of Part 1 of Division 1 of Title 5 of the Government Code.

(3) Unburied delivery hoses, vapor recovery hoses, and nozzles that are subject to unobstructed visual inspection for leakage.

(4) Vent lines, vapor recovery lines, and fill pipes which are designed to prevent, and do not hold, standing fluid in the pipes or lines.

(b) In addition to the exclusions specified in subdivision (y) of Section 25281, ''underground storage tank'' does not include any of the following:

(1) Vent lines, vapor recovery lines, and fill pipes that are designed to prevent, and do not hold, standing fluid in the pipes or lines.

(2) Unburied fuel delivery piping at marinas if the owner or operator conducts daily visual inspections of the piping and maintains a log of inspection results for review by the local agency. The exclusion provided by this paragraph shall not be applicable if the board adopts regulations pursuant to Section 25299.3 that address the design, construction, upgrade, and monitoring of unburied fuel delivery piping at marinas.

(3) Unburied fuel piping connected to an emergency generator tank system, if the owner or operator conducts visual inspections of the piping each time the tank system is operated, but no less than monthly, and maintains a log of inspection results for review by the local agency. The exclusion provided by this paragraph does not apply if the board adopts regulations pursuant to Section 25299.3 that address the design, construction, upgrade, and monitoring of unburied fuel supply and return piping connected to emergency generator tank systems.

(c) For purposes of this chapter, ''emergency generator tank system'' means an underground storage tank system that provides power supply in the event of a commercial power failure, stores diesel fuel, and is used solely in connection with an emergency system, legally required standby system, or optional standby system, as defined in Articles 700, 701, and 702 of the National Electrical Code of the National Fire Protection Association.

SEC. 13. Section 25284 of the Health and Safety Code is amended to read:

25284. (a) (1) Except as provided in subdivision (c), no person may own or operate an underground storage tank unless a permit for its operation has been issued by the local agency to the owner or operator of the tank, or a unified program facility permit has been issued by the local agency to the owner or operator of the unified program facility on which the tank is located.

(2) If the operator is not the owner of the tank, or if the permit is issued to a person other than the owner or operator of the tank, the permittee shall ensure that both the owner and the operator of the tank are provided with a copy of the permit.

(3) If the permit is issued to a person other than the operator of the tank, that person shall do all of the following:

(A) Enter into a written agreement with the operator of the tank to monitor the tank system as set forth in the permit.

(B) Provide the operator with a copy or summary of Section 25299 in the form that the board specifies by regulation.

(C) Notify the local agency of any change of operator.

(b) Each local agency shall prepare a form that provides for the acceptance of the obligations of a transferred permit by any person who

is to assume the ownership of an underground storage tank from the previous owner and is to be transferred the permit to operate the tank. That person shall complete the form accepting the obligations of the permit and submit the completed form to the local agency within 30 days from the date that the ownership of the underground storage tank is to be transferred. A local agency may review and modify, or terminate, the transfer of the permit to operate the underground storage tank, pursuant to the criteria specified in subdivision (a) of Section 25295, upon receiving the completed form.

(c) Any person assuming ownership of an underground storage tank used for the storage of hazardous substances for which a valid operating permit has been issued shall have 30 days from the date of assumption of ownership to apply for an operating permit pursuant to Section 25286 or, if accepting a transferred permit, shall submit to the local agency the completed form accepting the obligations of the transferred permit, as specified in subdivision (b). During the period from the date of application until the permit is issued or refused, the person shall not be held to be in violation of this section.

(d) A permit issued pursuant to this section shall apply and require compliance with all applicable regulations adopted by the board pursuant to Section 25299.3.

SEC. 14. Section 25284.1 of the Health and Safety Code is amended to read:

25284.1. (a) The board shall take all of the following actions with regard to the prevention of unauthorized releases from petroleum underground storage tanks:

(1) On or before June 1, 2000, initiate a field-based research program to quantify the probability and environmental significance of releases from underground storage tank systems meeting the 1998 upgrade requirements specified in Section 25284, as that section read on January 1, 2002. The research program shall do all of the following:

(A) Seek to identify the source and causes of releases and any deficiencies in leak detection systems.

(B) Include single-walled, double-walled, and hybrid tank systems, and avoid bias towards known leaking underground storage tank systems by including a statistically valid sample of all operating underground storage tank systems.

(C) Include peer review.

(2) Complete the research program on or before June 1, 2002.

(3) Use the results of the research program to develop appropriate changes in design, construction, monitoring, operation, and maintenance requirements for tank systems.

(4) On or before January 1, 2001, adopt regulations to do all of the following:

(A) (i) Require underground storage tank owners, operators, service technicians, installers, and inspectors to meet minimum industry-established training standards and require tank facilities to be operated in a manner consistent with industry-established best management practices.

(ii) The board shall implement an outreach effort to educate small business owners or operators on the importance of the regulations adopted pursuant to this subparagraph.

(B) (i) Except as provided in clauses (ii) and (iii), require testing of the secondary containment components, including under-dispenser and pump turbine containment components, upon initial installation of a secondary containment component and periodically thereafter, to ensure that the system is capable of containing releases from the primary containment until a release is detected and cleaned up. The board shall consult with the petroleum industry and local government to assess the appropriate test or tests that would comply with this subparagraph.

(ii) Secondary containment components that are part of an emergency generator tank system may be tested using enhanced leak detection, if the test is performed at the frequency specified by the board for testing of secondary containment pursuant to Section 2644.1 of Title 23 of the California Code of Regulations. If the results of the enhanced leak detection test indicate that any component of the emergency generator tank system is leaking liquid or vapor, the owner or operator shall take appropriate actions to correct the leakage, and the owner or operator shall retest the system using enhanced leak detection until the system is no longer leaking liquid or vapor.

(iii) Any tank or piping that is part of an emergency generator tank system and located within a structure as described in paragraph (2) of subdivision (a) of Section 25283.5 is exempt from the secondary containment testing required by clause (i) of subparagraph (B) of paragraph (4), if the owner or operator conducts visual inspections of tank or piping each time the tank system is operated, but no less than monthly, and maintains a log of inspection results for review by the local agency. The provisions of this clause are not applicable if the board adopts regulations pursuant to Section 25299.3 that address the design, construction, upgrade, and monitoring of unburied tanks that are part of an emergency generator tank system.

(C) Require annual testing of release detection sensors and alarms, including under-dispenser and pump turbine containment sensors and alarms. The board shall consult with the petroleum industry and local government to assess the appropriate test or tests that would comply with this subparagraph.

(5) (A) Require an owner or operator of an underground storage tank installed after July 1, 1987, if a tank is located within 1,000 feet of a

public drinking water well, as identified pursuant to the state GIS mapping database, to have the underground storage tank system fitted, on or before July 1, 2001, with under-dispenser containment or a spill containment or control system that is approved by the board as capable of containing any accidental release.

(B) Require all underground storage tanks installed after January 1, 2000, to have the tank system fitted with under-dispenser containment or a spill containment or control system to meet the requirements of subparagraph (A).

(C) Require an owner or operator of an underground storage tank that is not otherwise subject to subparagraph (A), and not subject to subparagraph (B), to have the underground storage tank system fitted to meet the requirements of subparagraph (A), on or before December 31, 2003.

(D) On and after January 1, 2002, no person shall install, repair, maintain, or calibrate monitoring equipment for an underground storage tank unless that person satisfies both of the following requirements:

(i) The person has fulfilled training standards identified by the board in regulations adopted pursuant to this section.

(ii) The person possesses a tank testing license issued by the board pursuant to Section 25284.4, or a Class ''A'' General Engineering Contractor License, C-10 Electrical Contractor License, C-34 Pipeline Contractor License, C-36 Plumbing Contractor License, or C-61 (D40) Limited Specialty Service Station Equipment and Maintenance Contractor License issued by the Contractors' State License Board.

(E) Loans and grants for the installation of under-dispenser containment or a spill containment or control system shall be made available pursuant to Chapter 8.5 (commencing with Section 15399.10) of Part 6.7 of Division 3 of Title 2 of the Government Code.

(6) Convene a panel of local agency and regional board representatives to review existing enforcement authority and procedures and to advise the board of any changes that are needed to enable local agencies to take adequate enforcement action against owners and operators of noncompliant underground storage tank facilities. The panel shall make its recommendations to the board on or before September 30, 2001. Based on the recommendations of the panel, the board shall also establish effective enforcement procedures in cases involving fraud.

(b) On or before July 1, 2001, the Contractors' State License Board, in consultation with the board, the petroleum industry, air pollution control districts, air quality management districts, and local government, shall review its requirements for petroleum underground storage tank system installation and removal contractors and make changes, where appropriate, to ensure these contractors are qualified.

SEC. 15. Section 25284.2 is added to the Health and Safety Code, to read:

25284.2. The owner or operator of an underground storage tank with a spill containment structure designed to prevent a release in the event of a spill or overfill while a hazardous substance is being placed in the tank shall annually test the spill containment structure to demonstrate that it is capable of containing the substance until it is detected and cleaned up.

SEC. 16. Section 25284.4 of the Health and Safety Code is amended to read:

25284.4. (a) All tank integrity tests required by this chapter or pursuant to any local ordinance in compliance with Section 25299.1 shall be performed only by, or under the direct and personal supervision of, a tank tester with a currently valid tank testing license issued pursuant to this section. No person shall engage in the business of tank integrity testing, or act in the capacity of a tank tester, within this state without first obtaining a tank testing license from the board. Any person who violates this subdivision is guilty of a misdemeanor and may be subject to civil liability pursuant to subdivision (g).

(b) Any person proposing to conduct tank integrity testing within the state shall apply to the board for a tank testing license, and shall pay the appropriate fee established by the board. A license issued pursuant to this section shall expire three years after the date of issuance and shall be subject to renewal, except as specified in this section. If the tank tester fails to renew the tank tester's license within three years of the license's expiration date, the license shall lapse and the person shall apply for a new tank testing license and shall meet the same requirements of this section for a new applicant. A tank tester shall pay a fee to the board at the time of licensing and at the time of renewal. The board shall adopt a fee schedule for the issuance and renewal of tank testing licenses to cover the necessary and reasonable costs of administering and enforcing this section.

(c) (1) The board may establish any additional qualifications and standards for the licensing of tank testers. Each applicant for licensing as a tank tester shall pass an examination specified by the board and shall have completed a minimum of either of the following:

(A) One year of qualifying field experience by personally testing a number of underground storage tanks specified by the board.

(B) Completed six months of field experience by personally testing a number of underground storage tanks specified by the board and have successfully completed a course of study applicable to tank testing that is satisfactory to the board.

(2) The examination required by paragraph (1) shall, at a minimum, test the applicant's knowledge of all of the following:

(A) General principles of tank and pipeline testing.

(B) Basic understanding of the mathematics relating to tank testing.

(C) Understanding of the specific test procedures, principles, and equipment for which the tank tester will be qualified to operate.

(D) Knowledge of the regulations and laws governing the regulation of underground storage tanks.

(E) Proper safety procedures.

(d) The board shall maintain a current list of all persons licensed pursuant to this section, including a record of enforcement actions taken against these persons. This list shall be made available to local agencies and the public on request.

(e) A tank tester may be liable civilly in accordance with subdivision (g) and, in addition, may be subject to administrative sanctions pursuant to subdivision (f) for performing or causing another to perform, any of the following actions:

(1) Willfully or negligently violating, or causing, or allowing the violation of, this chapter or any regulations adopted pursuant to this chapter.

(2) Willfully or negligently failing to exercise direct and personal control over an unlicensed employee, associate, assistant, or agent during any phase of tank integrity testing.

(3) Without regard to intent or negligence, using or permitting a licensed or unlicensed employee, associate, assistant, or agent to use any method or equipment that is demonstrated to be unsafe or unreliable for tank integrity testing.

(4) Submitting false or misleading information on an application for license.

(5) Using fraud or deception in the course of doing business as a tank tester.

(6) Failing to use reasonable care, or judgment, while performing tank integrity tests.

(7) Failing to maintain competence in approved tank testing procedures.

(8) Failing to use proper tests or testing equipment to conduct tank integrity tests.

(9) Any other action that the board may, by regulation, prescribe.

(f) (1) The board may suspend the license of a tank tester for a period of up to one year, and may revoke, or refuse to grant or renew, a license and may place on probation, or reprimand, the licensee upon any reasonable ground, including, but not limited to, those violations specified in subdivision (e). The board may investigate any licensed tank tester after receiving a written request from a local agency.

(2) The board shall notify the tank tester of any alleged violations and of proposed sanctions, before taking any action pursuant to this

subdivision. The tank tester may request a hearing, or submit a written response within 30 days of the date of notice. Any hearing conducted pursuant to this subdivision shall be conducted in accordance with the hearing procedure specified in subdivision (g). After the hearing, or at a time after the 30-day response period, the board may impose the appropriate administrative sanctions authorized by this subdivision if it finds that the tank tester has committed any of the alleged violations specified in the notice.

(g) (1) The board may impose civil liability for a violation of subdivision (a) or (e) in accordance with Article 2.5 (commencing with Section 13323) of Chapter 5 of Division 7 of the Water Code, in an amount that shall not exceed five hundred dollars ($500) for each day in which the violation occurs, except that the chief of the division of water quality of the board or any other person designated by the board shall issue the complaint to the violator. The complaint shall be issued based on information developed by board staff or local agencies. Any hearing on the complaint shall be made before the board, or a panel thereof, consisting of one or more board members. The decision of the board shall be final upon issuance and may be reviewed pursuant to Article 3 (commencing with Section 13330) of Chapter 5 of Division 7 of the Water Code within 30 days following issuance of the order.

(2) Civil liability for a violation of subdivision (a) or (e) may be imposed by a superior court at the request of the board in an amount which shall not exceed two thousand five hundred dollars ($2,500) for each day in which the violation occurs.

(h) Any fees or civil liability collected pursuant to this section shall be deposited in the Underground Storage Tank Tester Account which is hereby created in the General Fund. The money in this account is available for expenditure by the board, upon appropriation by the Legislature, for purposes of implementing the tank tester licensing program established by this section and for repayment of the loan made by Section 13 of Chapter 1372 of the Statutes of 1987.

(i) A tank tester who conducts or supervises a tank or piping integrity test shall prepare a report detailing the results of the tank test and shall maintain a record of the report for at least three years, or as otherwise required by the board. The tank tester shall type or print his or her name and include his or her license number on the report and shall endorse the report under penalty of perjury by original signature.

SEC. 17. Section 25288 of the Health and Safety Code is amended to read:

25288. (a) The local agency shall inspect every underground tank system within its jurisdiction at least once every year. The purpose of the inspection is to determine whether the tank system complies with the applicable requirements of this chapter and the regulations adopted by

the board pursuant to Section 25299.3, including the design and construction standards of Section 25290.1, 25291, or 25292, whichever is applicable, whether the operator has monitored and tested the tank system as required by the permit, and whether the tank system is in a safe operating condition.

(b) After an inspection conducted pursuant to subdivision (a), the local agency shall prepare a compliance report detailing the inspection and shall send a copy of this report to the permitholder and the owner or operator, if the owner or operator is not the permitholder. Any report prepared pursuant to this section shall be consolidated into any other inspection reports required pursuant to Chapter 6.11 (commencing with Section 25404), the requirements listed in subdivision (c) of Section 25404, and the regulations adopted to implement the requirements listed in subdivision (c) of Section 25404.

(c) In lieu of the annual local agency inspections, the local agency may require the permitholder to employ a special inspector to conduct the annual inspection. The local agency shall supply the permitholder with a list of at least three special inspectors that are qualified to conduct the inspection. The permitholder shall employ a special inspector from the list provided by the local agency. The special inspector's authority shall be the same as that of the local agency as set forth in subdivision (a).

(d) Within 60 days after receiving a compliance report or special inspection report prepared in accordance with subdivision (b) or (c), respectively, the permitholder shall file with the local agency a plan to implement all recommendations contained in the compliance report or shall demonstrate, to the satisfaction of the local agency, why these recommendations should not be implemented. Any corrective action conducted pursuant to the recommendations in the report shall be taken pursuant to Sections 25296.10 and 25299.36.

SEC. 18. Section 25290.1 is added to the Health and Safety Code, to read:

25290.1. (a) Notwithstanding subdivision (o) of Section 25281, for purposes of this section, ''product tight'' means impervious to the liquid and vapor of the substance that is contained, or is to be contained, so as to prevent the seepage of the substance from the containment.

(b) Notwithstanding Section 25291, every underground storage tank installed on or after July 1, 2003, shall meet the requirements of this section.

(c) The underground storage tank shall be designed and constructed to provide primary and secondary levels of containment of the hazardous substances stored in it in accordance with the following performance standards:

(1) Primary containment shall be product tight and compatible with stored product.

(2) Secondary containment shall be product tight and constructed to prevent structural weakening as a result of contact with any hazardous substances released from the primary containment, and also shall be capable of storing the hazardous substances for the maximum anticipated period of time necessary for the recovery of any released hazardous substance.

(3) Secondary containment shall be constructed to prevent any water intrusion into the system by precipitation, infiltration, or surface runoff.

(4) In the case of an installation with one primary tank, the secondary containment shall be large enough to contain at least 100 percent of the volume of the primary tank.

(5) In the case of multiple primary tanks, the secondary containment shall be large enough to contain 150 percent of the volume of the largest primary tank placed in it, or 10 percent of the aggregate internal volume of all primary tanks, whichever is greater.

(d) The underground tank system shall be designed and constructed with a continuous monitoring system capable of detecting the entry of the liquid- or vapor-phase of the hazardous substance stored in the primary containment into the secondary containment and capable of detecting water intrusion into the secondary containment.

(e) The interstitial space of the underground storage tank shall be maintained under constant vacuum or pressure such that a breach in the primary or secondary containment is detected before the liquid- or vapor-phase of the hazardous substance stored in the underground storage tank is released into the environment. The use of interstitial liquid level measurement methods satisfies the requirements of this subdivision.

(f) The underground storage tank shall be provided with equipment to prevent spills and overfills from the primary tank.

(g) If different substances are stored in the same tank and in combination may cause a fire or explosion, or the production of flammable, toxic, or poisonous gas, or the deterioration of a primary or secondary container, those substances shall be separated in both the primary and secondary containment so as to avoid potential intermixing.

(h) Underground pressurized piping that conveys a hazardous substance shall be equipped with an automatic line leak detector.

(i) Before the underground storage tank is covered, enclosed, or placed in use, the standard installation testing requirements for underground storage systems specified in Section 2.4 of the Flammable and Combustible Liquids Code, adopted by the National Fire Protection Association (NFPA 30), as amended and published in the respective edition of the Uniform Fire Code, shall be followed.

(j) Before the underground storage tank is placed in use, the underground storage tank shall be tested after installation using one of the following methods to demonstrate that the tank is product tight:

(1) Enhanced leak detection.

(2) An inert gas pressure test that has been certified by a third party and approved by the board.

(3) A test method deemed equivalent to enhanced leak detection or an inert gas pressure test by the board in regulations adopted pursuant to this chapter. An underground storage tank installed and tested in accordance with this subdivision is exempt from the requirements of Section 25292.5.

(k) Notwithstanding Section 25281.5, for any system installed to meet the requirements of this section, those portions of vent lines, vapor recovery lines, and fill pipes that are beneath the surface of the ground are ''pipe'' as the term is defined in subdivision (m) of Section 25281, and therefore part of the underground storage tank system.

SEC. 18.5. Section 25291 of the Health and Safety Code is amended to read:

25291. Every underground storage tank installed after January 1, 1984, shall meet all of the following requirements:

(a) The underground storage tank shall be designed and constructed to provide primary and secondary levels of containment of the hazardous substances stored in it in accordance with the following performance standards:

(1) Primary containment shall be product-tight and compatible with the substance stored.

(2) Secondary containment shall be constructed to prevent structural weakening as a result of contact with any released hazardous substances, and also shall be capable of storing the hazardous substances for the maximum anticipated period of time necessary for the recovery of any released hazardous substance.

(3) In the case of an installation with one primary container, the secondary containment shall be large enough to contain at least 100 percent of the volume of the primary tank.

(4) In the case of multiple primary tanks, the secondary container shall be large enough to contain 150 percent of the volume of the largest primary tank placed in it, or 10 percent of the aggregate internal volume of all primary tanks, whichever is greater.

(5) If the facility is open to rainfall, then the secondary containment shall be able to additionally accommodate the maximum volume of a 24-hour rainfall as determined by a 25-year storm history.

(6) Single-walled containers do not fulfill the requirement of an underground storage tank providing both a primary and a secondary containment. However, an underground storage tank with a primary

container constructed with a double complete shell shall be deemed to have met the requirements for primary and secondary containment set forth in this section if all of the following criteria are met:

(A) The outer shell is constructed primarily of nonearthen materials, including, but not limited to, concrete, steel, and plastic, which provide structural support and a continuous leak detection system with alarm is located in the space between the shells.

(B) The system is capable of detecting the entry of hazardous substances from the inner container into the space.

(C) The system is capable of detecting water intrusion into the space from the outer shell.

(7) Underground storage tanks for motor vehicle fuels installed before January 1, 1997, may be designed and constructed in accordance with this paragraph in lieu of the requirements of paragraphs (1) to (6), inclusive, if all of the following conditions exist:

(A) The primary containment construction is of glass fiber reinforced plastic, cathodically protected steel, or steel clad with glass fiber reinforced plastic.

(B) Any alternative primary containment is installed in conjunction with a system that will intercept and direct a leak from any part of the underground storage tank to a monitoring well to detect any release of motor vehicle fuels.

(C) The system is designed to provide early leak detection and response, and to protect the groundwater from releases.

(D) The monitoring is in accordance with the alternative method identified in paragraph (4) of subdivision (b) of Section 25292. This subparagraph does not apply to tanks designed, constructed, and monitored in accordance with paragraph (6).

(E) Pressurized piping systems connected to tanks used for the storage of motor vehicle fuels and monitored in accordance with paragraph (4) of subdivision (b) of Section 25292 also meet the conditions of this subdivision if the tank meets the conditions of subparagraphs (A) to (D), inclusive. However, any pipe connected to an underground storage tank installed after July 1, 1987, shall be equipped with secondary containment that complies with paragraphs (1) to (6), inclusive.

(b) The underground tank system shall be designed and constructed with a monitoring system capable of detecting the entry of the hazardous substance stored in the primary containment into the secondary containment.

(c) The underground storage tank shall be provided with equipment to prevent spills and overflows from the primary tank.

(d) If different substances are stored in the same tank and in combination may cause a fire or explosion, or the production of

flammable, toxic, or poisonous gas, or the deterioration of a primary or secondary container, those substances shall be separated in both the primary and secondary containment to avoid potential intermixing.

(e) If water could enter into the secondary containment by precipitation or infiltration, the facility shall contain a means of monitoring for water intrusion and for removing the water by the owner or operator. This removal system shall also prevent uncontrolled removal of this water and provide for a means of analyzing the removed water for hazardous substance contamination and a means of disposing of the water, if so contaminated, at an authorized disposal facility.

(f) Underground pressurized piping that conveys a hazardous substance shall be equipped with an automatic line leak detector and shall be tightness tested annually.

(g) Before the underground storage tank is covered, enclosed, or placed in use, the standard installation testing for requirements for underground storage systems specified in Section 2-7 of the Flammable and Combustible Liquids Code, adopted by the National Fire Protection Association, (NFPA 30) as amended and published in the respective edition of the Uniform Fire Code, shall be followed.

(h) Before the underground storage tank is placed in service, the underground tank system shall be tested in operating condition using a tank integrity test.

(i) If the underground storage tank is designed to maintain a water level in the secondary containment, the tank shall be equipped with a safe method of removing any excess water to a holding facility and the owner or operator shall inspect the holding facility monthly for the presence of excess water overflow. If excess water is present in the holding facility, the permitholder shall provide a means to analyze the water for hazardous substance contamination and a means to dispose of the water, if so contaminated, at an authorized disposal facility.

SEC. 19. Section 25292.3 of the Health and Safety Code is repealed.

SEC. 20. Section 25292.3 is added to the Health and Safety Code, to read:

25292.3. (a) Upon the discovery of a significant violation of any requirement in this chapter that poses an imminent threat to human health or safety or the environment or of any regulation adopted pursuant to this chapter, the local agency may affix a red tag, in plain view, to the fill pipe of the noncompliant underground storage tank system in order to provide notice that delivery of petroleum into the system is prohibited.

(b) Upon the discovery of a significant violation of any requirement in this chapter or of any regulation adopted pursuant to this chapter, the local agency may issue a notice of significant violation to the owner or operator. The owner or operator who receives a notice of significant violation shall, within seven days from receipt of the notice, correct the

violation to the satisfaction of the local agency. If the owner or operator does not correct the violation within seven days, the local agency may affix a red tag, in plain view, to the fill pipe of the noncompliant underground storage tank system to provide notice that delivery of petroleum into the system is prohibited.

(c) No owner or operator of a facility may deposit or allow the deposit of petroleum into an underground storage tank system that has a red tag affixed to the system's fill pipe.

(d) No person may deposit petroleum into an underground storage tank system that has a red tag affixed to its fill pipe.

(e) No person shall remove, deface, alter, or otherwise tamper with a red tag so that the information contained on the tag is not legible.

(f) Upon notification by the owner or operator that the violation has been corrected, the local agency shall inspect the underground storage tank system within five days to determine whether the system continues to be in significant violation. If the local agency determines that the system is no longer in significant violation, the local agency shall immediately remove the red tag.

(g) The board shall adopt regulations to define significant violations for purposes of this section.

SEC. 21. Section 25292.4 of the Health and Safety Code is amended to read:

25292.4. (a) On and after November 1, 2000, an owner or operator of an underground storage tank system with a single-walled component that is located within 1,000 feet of a public drinking water well, as identified pursuant to the state GIS mapping database, shall implement a program of enhanced leak detection or monitoring, in accordance with the regulations adopted by the board pursuant to subdivision (c).

(b) The board shall notify the owner and operator of each underground storage tank system that is located within 1,000 feet of a public drinking water well, as identified pursuant to the state GIS mapping database, of the owner's and operator's responsibilities pursuant to this section. The board shall provide each local agency with a list of tank systems within the local agency's jurisdiction that are located within 1,000 feet of a public drinking water well, as identified pursuant to the state GIS mapping database.

(c) The board shall adopt regulations to implement the enhanced leak detection and monitoring program required by subdivision (a). Before adopting these regulations, the board shall consult with the petroleum industry, local governments, environmental groups, and other interested parties to assess the appropriate technology and procedures to implement the enhanced leak detection and monitoring program required by subdivision (a). In adopting these regulations, the board

shall consider existing leak detection technology and external monitoring techniques or procedures for underground storage tanks.

(d) If the results of the enhanced leak detection test indicate that any component of the underground storage tank system is leaking liquid or vapor, the owner or operator shall take appropriate actions to correct the leakage, and the owner or operator shall retest the system using enhanced leak detection until the system is no longer leaking liquid or vapor.

SEC. 22. Section 25292.5 is added to the Health and Safety Code, to read:

25292.5. (a) On or before January 1, 2005, the owner or operator of an underground storage tank system that is located within 1,000 feet of a public drinking water well, as identified pursuant to the state GIS mapping database, and that is not otherwise subject to subdivision (j) of Section 25290.1 or Section 25292.4, shall test the system once using an enhanced leak detection test. The enhanced leak detection test shall meet the requirements of subsection (e) of Section 2640 of, and Section 2644.1 of, Title 23 of the California Code of Regulations, as those regulations read on January 1, 2003, except that the requirement in those regulations to repeat the test every 36 months shall not apply.

(b) On or before June 1, 2003, the board shall notify the owner and operator of each underground storage tank system that is located within 1,000 feet of a public drinking water well, as identified pursuant to the state GIS mapping database, of the owner's and operators' responsibilities pursuant to this section. The board shall provide each local agency with a list of tank systems within the local agency's jurisdiction that are within 1,000 feet of a public drinking water well, as identified pursuant to the state GIS mapping database.

(c) Notwithstanding subdivision (a), if the results of the enhanced leak detection test indicate that any component of the underground storage tank system is leaking liquid or vapor, the owner or operator shall take appropriate actions to correct the leakage, and the owner or operator shall retest the system using enhanced leak detection until the system is no longer leaking liquid or vapor.

SEC. 23. Section 25296.10 is added to the Health and Safety Code, to read:

25296.10. (a) Each owner, operator, or other responsible party shall take corrective action in response to an unauthorized release in compliance with this chapter and the regulations adopted pursuant to Section 25299.3. In adopting corrective action regulations, the board shall develop corrective action requirements for health hazards and protection of the environment, based on the severity of the health hazards and the other factors listed in subdivision (b). The corrective action regulations adopted by the board pursuant to Section 25299.77 to implement Section 25299.37, as that section read on January 1, 2002,

that were in effect before January 1, 2003, shall continue in effect on and after January 1, 2003, until revised by the board to implement this section and shall be deemed to have been adopted pursuant to Section 25299.3.

(b) Any corrective action conducted pursuant to this chapter shall ensure protection of human health, safety, and the environment. The corrective action shall be consistent with any applicable waste discharge requirements or other order issued pursuant to Division 7 (commencing with Section 13000) of the Water Code, all applicable state policies for water quality control adopted pursuant to Article 3 (commencing with Section 13140) of Chapter 3 of Division 7 of the Water Code, and all applicable water quality control plans adopted pursuant to Section 13170 of the Water Code and Article 3 (commencing with Section 13240) of Chapter 4 of Division 7 of the Water Code.

(c) (1) When a local agency, the board, or a regional board requires an owner, operator, or other responsible party to undertake corrective action, including preliminary site assessment and investigation, pursuant to an oral or written order, directive, notification, or approval issued pursuant to this section, or pursuant to a cleanup and abatement order or other oral or written directive issued pursuant to Division 7 (commencing with Section 13000) of the Water Code, the owner, operator, or other responsible party shall prepare a work plan that details the corrective action the owner, operator, or other responsible party shall take to comply with the requirements of subdivisions (a) and (b) and the corrective action regulations adopted pursuant to Section 25299.3.

(2) The work plan required by paragraph (1) shall be prepared in accordance with the regulations adopted pursuant to Section 25299.3. The work plan shall include a schedule and timeline for corrective action.

(3) At the request of the owner, operator, or other responsible party, the local agency, the board, or the regional board shall review a work plan prepared pursuant to paragraph (1) and either accept the work plan, if it meets the requirements of the section, or disapprove the work plan if it does not meet those requirements. If the local agency, board, or the regional board accepts the work plan, it shall indicate to the owner, operator, or other responsible party, the actions or other elements of the work plan that are, in all likelihood, adequate and necessary to meet the requirements of this section, and the actions and elements that may be unnecessary. If the local agency, board, or regional board disapproves the work plan, it shall state the reasons for the disapproval.

(4) In the interests of minimizing environmental contamination and promoting prompt cleanup, the responsible party may begin implementation of the proposed action after the work plan has been submitted but before the work plan has received regulatory agency

acceptance, except that implementation of the work plan may not begin until 60 calendar days from the date of submittal, unless the responsible party is otherwise directed in writing by the regulatory agency. However, before beginning implementation pursuant to this paragraph, the responsible party shall notify the regulatory agency of the intent to initiate proposed actions set forth in the submitted work plan.

(5) The owner, operator, or other responsible party shall conduct corrective actions in accordance with the work plan approved pursuant to this section.

(6) When the local agency, the board, or the regional board requires a responsible party to conduct corrective action pursuant to this section, it shall inform the responsible party of its right to request the designation of an administering agency to oversee the site investigation and remedial action at its site pursuant to Section 25262 and, if requested to do so by the responsible party, the local agency shall provide assistance to the responsible party in preparing and processing a request for that designation.

(d) (1) This subdivision applies only to an unauthorized release from a petroleum underground storage tank that is subject to Chapter 6.75 (commencing with Section 25299.10).

(2) Notwithstanding Section 25297.1, the board shall implement a procedure that does not assess an owner, operator, or responsible party taking corrective action pursuant to this chapter for the costs of a local oversight program pursuant to paragraph (4) of subdivision (d) of Section 25297.1. The board shall institute an internal procedure for assessing, reviewing, and paying those costs directly between the board and the local agency.

(e) A person to whom an order is issued pursuant to subdivision (c), shall have the same rights of administrative and judicial appeal and review as are provided by law for cleanup and abatement orders issued pursuant to Section 13304 of the Water Code.

(f) (1) If a person to whom an order is issued pursuant to subdivision (c) does not comply with the order, the board, a regional board, or the local agency may undertake or contract for corrective action.

(2) The board, a regional board, or local agency shall be permitted reasonable access to property owned or possessed by an owner, operator, or responsible party as necessary to perform corrective action pursuant to this subdivision. The access shall be obtained with the consent of the owner or possessor of the property or, if the consent is withheld, with a warrant duly issued pursuant to the procedure described in Title 13 (commencing with Section 1822.50) of Part 3 of the Code of Civil Procedure. However, if there is an emergency affecting public health or safety, or the environment, the board, a regional board, or local agency may enter the property without consent or the issuance of a warrant.

(3) The board, a regional board, or local agency may recover its costs incurred under this subdivision pursuant to Section 13304 of the Water Code. If the unauthorized release is from an underground storage tank that is subject to Chapter 6.75 (commencing with Section 25299.10), the board, a regional board, or local agency may also recover its costs pursuant to Section 25299.70.

(g) The following uniform closure letter shall be issued to the owner, operator, or other responsible party taking corrective action at an underground storage tank site by the local agency or the regional board with jurisdiction over the site, or the board, upon a finding that the underground storage tank site is in compliance with the requirements of subdivisions (a) and (b) and with any corrective action regulations adopted pursuant to Section 25299.3 and that no further corrective action is required at the site:

''[Case File Number]

Dear [Responsible Party]

This letter confirms the completion of a site investigation and corrective action for the underground storage tank(s) formerly located at the above-described location. Thank you for your cooperation throughout this investigation. Your willingness and promptness in responding to our inquiries concerning the former underground storage tank(s) are greatly appreciated.

Based on information in the above-referenced file and with the provision that the information provided to this agency was accurate and representative of site conditions, this agency finds that the site investigation and corrective action carried out at your underground storage tank(s) site is in compliance with the requirements of subdivisions (a) and (b) of Section 25296.10 of the Health and Safety Code and with corrective action regulations adopted pursuant to Section 25299.3 of the Health and Safety Code and that no further action related to the petroleum release(s) at the site is required.

This notice is issued pursuant to subdivision (g) of Section 25296.10 of the Health and Safety Code.

Please contact our office if you have any questions regarding this matter.

Sincerely,

[Name of Board Executive Director, Regional Board Executive Officer, or Local Agency Director]''

(h) Any order, directive, notification, or approval issued under Section 25299.37 as that section read on January 1, 2002, that was issued on or before January 1, 2003, shall be deemed to have been issued pursuant to this section.

SEC. 24. Section 25296.20 is added to the Health and Safety Code, to read:

25296.20. (a) The local agency, the board, or a regional board shall not consider corrective action or site closure proposals from the primary or active responsible party, issue a closure letter, or make a determination that no further corrective action is required with respect to a site upon which there was an unauthorized release from an underground storage tank unless all current record owners of fee title to the site of the proposed action have been notified of the proposed action by the local agency, board, or regional board.

(b) The local agency, board, or regional board shall take all reasonable steps necessary to accommodate responsible landowner participation in the cleanup or site closure process and shall consider all input and recommendations from any responsible landowner wishing to participate.

SEC. 25. Section 25296.25 is added to the Health and Safety Code, to read:

25296.25. (a) (1) Unless the board, in consultation with local agencies and the regional board, determines that a site is an emergency site, the board, at the request of a responsible party who is eligible for reimbursement of corrective action costs under Chapter 6.75 (commencing with Section 25299.10), may suspend additional corrective action or investigation work at a site, based on a preliminary site assessment conducted in accordance with the corrective action regulations adopted by the board, but the board shall not suspend any of the following activities pursuant to this section:

(A) Removal of, or approved modifications of, existing tanks.

(B) Excavation of petroleum saturated soil or removal of excess petroleum from saturated soil.

(C) Removal of free product from the saturated and unsaturated zones.

(D) Periodic monitoring to ensure that released petroleum is not migrating in an uncontrolled manner that will cause the site to become an emergency site.

(2) For purposes of this subdivision, ''emergency site'' means a site that, because of an unauthorized release of petroleum, meets one of the following conditions:

(A) The site presents an imminent threat to public health or safety or the environment.

(B) The site poses a substantial probability of causing a condition of contamination or nuisance, as defined in Section 13050 of the Water Code, or of causing pollution of a source of drinking water at a level that is a violation of a primary or secondary drinking water standard adopted

by the State Department of Health Services pursuant to Chapter 4 (commencing with Section 116270) of Part 12 of Division 104.

(b) The suspension shall continue until one of the following occurs:

(1) The board provides the eligible responsible party with a letter of commitment pursuant to Chapter 6.75 (commencing with Section 25299.10) that the party will receive reimbursement for the corrective action.

(2) The responsible party requests in writing that the suspension be terminated and that the work continue.

(3) The fund established pursuant to Article 6 (commencing with Section 25299.50) of Chapter 6.75 is no longer in existence.

(c) The board shall adopt regulations pursuant to Section 25299.3 that specify the conditions under which a site is an imminent threat to public health or safety or to the environment or poses a substantial probability of causing a condition of contamination, nuisance, or pollution as specified in paragraph (2) of subdivision (a). The board shall not suspend corrective action or investigation work at any site pursuant to this section until the effective date of the regulations adopted by the board pursuant to this subdivision.

SEC. 26. Section 25296.30 is added to the Health and Safety Code, to read:

25296.30. (a) The board, in consultation with the State Department of Health Services, shall develop guidelines for the investigation and cleanup of methyl tertiary-butyl ether (MTBE) and other ether-based oxygenates in groundwater. The guidelines shall include procedures for determining, to the extent practicable, whether the contamination associated with an unauthorized release of MTBE is from the tank system prior to the system's most recent upgrade or replacement or if the contamination is from an unauthorized release from the current tank system.

(b) The board, in consultation with the State Department of Health Services, shall develop appropriate cleanup standards for contamination associated with a release of methyl tertiary-butyl ether.

SEC. 27. Section 25296.40 is added to the Health and Safety Code, to read:

25296.40. (a) (1) Any owner or operator, or other responsible party who has a tank case and who believes that the corrective action plan for the site has been satisfactorily implemented, but where closure has not been granted, may petition the board for a review of the case.

(2) Upon receipt of a petition pursuant to paragraph (1), the board may close the tank case or require closure, if the tank case is at a site under the jurisdiction of a regional board or a local agency that is implementing a local oversight program under Section 25297.1 and if the board determines that corrective action at the site is in compliance

with all of the requirements of subdivisions (a) and (b) of Section 25296.10 and the corrective action regulations adopted pursuant to Section 25299.3. If a tank case is at a site under the jurisdiction of a local agency that is not implementing a local oversight program pursuant to Section 25297.1, the board may recommend to the local agency that the tank case be closed.

(b) Any aggrieved person may, not later than 30 days from the date of final action by the board, pursuant to subdivision (a), file with the superior court a petition for writ of mandate for review of the decision. If the aggrieved person does not file a petition for writ of mandate within the time provided by this subdivision, a board decision shall not be subject to review by any court. Section 1094.5 of the Code of Civil Procedure shall govern proceedings for which petitions are filed pursuant to this subdivision. For purposes of subdivision (c) of Section 1094.5 of the Code of Civil Procedure, the court shall uphold the decision if the decision is based upon substantial evidence in light of the whole record.

(c) The authority provided under this section does not limit a person's ability to petition the board for review under any other state law.

SEC. 28. Section 25297.1 of the Health and Safety Code is amended to read:

25297.1. (a) In addition to the authority granted to the board pursuant to Division 7 (commencing with Section 13000) of the Water Code and to the department pursuant to Chapter 6.8 (commencing with Section 25300), the board, in cooperation with the department, shall develop and implement a local oversight program for the abatement of, and oversight of the abatement of, unauthorized releases of hazardous substances from underground storage tanks by local agencies. In implementing the local oversight program, the agreement specified in subdivision (b) shall be between the board and the local agency. The board shall select local agencies for participation in the program from among those local agencies which apply to the board, giving first priority to those local agencies which have demonstrated prior experience in cleanup, abatement, or other actions necessary to remedy the effects of unauthorized releases of hazardous substances from underground storage tanks. The board shall select only those local agencies which have implemented this chapter and that, except as provided in Section 25404.5, have begun to collect and transmit to the board the surcharge or fees pursuant to subdivision (b) of Section 25287.

(b) In implementing the local oversight program described in subdivision (a), the board may enter into an agreement with any local agency to perform, or cause to be performed, any cleanup, abatement, or other action necessary to remedy the effects of a release of hazardous substances from an underground storage tank with respect to which the

local agency has enforcement authority pursuant to this section. The board may not enter into an agreement with a local agency for soil contamination cleanup or for groundwater contamination cleanup unless the board determines that the local agency has a demonstrated capability to oversee or perform the cleanup. The implementation of the cleanup, abatement, or other action shall be consistent with procedures adopted by the board pursuant to subdivision (d) and shall be based upon cleanup standards specified by the board or regional board.

(c) The board shall provide funding to a local agency that enters into an agreement pursuant to subdivision (b) for the reasonable costs incurred by the local agency in overseeing any cleanup, abatement, or other action taken by a responsible party to remedy the effects of unauthorized releases from underground storage tanks.

(d) The board shall adopt administrative and technical procedures, as part of the state policy for water quality control adopted pursuant to Section 13140 of the Water Code, for cleanup and abatement actions taken pursuant to this section. The procedures shall include, but not be limited to, all of the following:

(1) Guidelines as to which sites may be assigned to the local agency.

(2) The content of the agreements which may be entered into by the board and the local agency.

(3) Procedures by which a responsible party may petition the board or a regional board for review, pursuant to Article 2 (commencing with Section 13320) of Chapter 5 of Division 7 of the Water Code, or pursuant to Chapter 9.2 (commencing with Section 2250) of Division 3 of Title 23 of the California Code of Regulations, or any successor regulation, as applicable, of actions or decisions of the local agency in implementing the cleanup, abatement, or other action.

(4) Protocols for assessing and recovering money from responsible parties for any reasonable and necessary costs incurred by the local agency in implementing this section, as specified in subdivision (i), unless the cleanup or abatement action is subject to subdivision (d) of Section 25296.10.

(5) Quantifiable measures to evaluate the outcome of a pilot program established pursuant to this section.

(e) Any agreement between the regional board and a local agency to carry out a local oversight program pursuant to this section shall require both of the following:

(1) The local agency shall establish and maintain accurate accounting records of all costs it incurs pursuant to this section and shall periodically make these records available to the board. The Controller may annually audit these records to verify the hourly oversight costs charged by a local agency. The board shall reimburse the Controller for the cost of the audits of a local agency's records conducted pursuant to this section.

(2) The board and the department shall make reasonable efforts to recover costs incurred pursuant to this section from responsible parties, and may pursue any available legal remedy for this purpose.

(f) The board shall develop a system for maintaining a database for tracking expenditures of funds pursuant to this section, and shall make this data available to the Legislature upon request.

(g) (1) Sections 25355.5 and 25356 do not apply to expenditures from the Hazardous Substance Cleanup Fund for oversight of abatement of releases from underground storage tanks as part of the local oversight program established pursuant to this section.

(2) A local agency that enters into an agreement pursuant to subdivision (b), shall notify the responsible party, for any site subject to a cleanup, abatement, or other action taken pursuant to the local oversight program established pursuant to this section, that the responsible party is liable for not more than 150 percent of the total amount of site-specific oversight costs actually incurred by the local agency.

(h) Any aggrieved person may petition the board or regional board for review of the action or failure to act of a local agency, which enters into an agreement pursuant to subdivision (b), at a site subject to cleanup, abatement, or other action conducted as part of the local oversight program established pursuant to this section, in accordance with the procedures adopted by the board or regional board pursuant to subdivision (d).

(i) (1) For purposes of this section, site-specific oversight costs include only the costs of the following activities, when carried out by technical program staff of a local agency and their immediate supervisors:

(A) Responsible party identification and notification.

(B) Site visits.

(C) Sampling activities.

(D) Meetings with responsible parties or responsible party consultants.

(E) Meetings with the regional board or with other affected agencies regarding a specific site.

(F) Review of reports, workplans, preliminary assessments, remedial action plans, or postremedial monitoring.

(G) Development of enforcement actions against a responsible party.

(H) Issuance of a closure document.

(2) The responsible party is liable for the site-specific oversight costs, calculated pursuant to paragraphs (3) and (4), incurred by a local agency, in overseeing any cleanup, abatement, or other action taken pursuant to this section to remedy an unauthorized release from an underground storage tank.

(3) Notwithstanding the requirements of any other provision of law, the amount of liability of a responsible party for the oversight costs incurred by the local agency and by the board and regional boards in overseeing any action pursuant to this section shall be calculated as an amount not more than 150 percent of the total amount of the site-specific oversight costs actually incurred by the local agency and shall not include the direct or indirect costs incurred by the board or regional boards.

(4) (A) The total amount of oversight costs for which a local agency may be reimbursed shall not exceed one hundred fifteen dollars ($115) per hour, multiplied by the total number of site-specific hours performed by the local agency.

(B) The total amount of the costs per site for administration and technical assistance to local agencies by the board and the regional board entering into agreements pursuant to subdivision (b) shall not exceed a combined total of thirty-five dollars ($35) for each hour of site-specific oversight. The board shall base its costs on the total hours of site-specific oversight work performed by all participating local agencies. The regional board shall base its costs on the total number of hours of site-specific oversight costs attributable to the local agency which received regional board assistance.

(C) The amounts specified in subparagraphs (A) and (B) are base rates for the 1990–91 fiscal year. Commencing July 1, 1991, and for each fiscal year thereafter, the board shall adjust the base rates annually to reflect increases or decreases in the cost of living during the prior fiscal year, as measured by the implicit price deflator for state and local government purchases of goods and services, as published by the United States Department of Commerce or by a successor agency of the federal government.

(5) In recovering costs from responsible parties for costs incurred under this section, the local agency shall prorate any costs identifiable as startup costs over the expected number of cases which the local agency will oversee during a 10-year period. A responsible party who has been assessed startup costs for the cleanup of any unauthorized release that, as of January 1, 1991, is the subject of oversight by a local agency, shall receive an adjustment by the local agency in the form of a credit, for the purposes of cost recovery. Startup costs include all of the following expenses:

(A) Small tools, safety clothing, cameras, sampling equipment, and other similar articles necessary to investigate or document pollution.

(B) Office furniture.

(C) Staff assistance needed to develop computer tracking of financial and site-specific records.

(D) Training and setup costs for the first six months of the local agency program.

(6) This subdivision does not apply to costs that are required to be recovered pursuant to Article 7.5 (commencing with Section 25385) of Chapter 6.8.

SEC. 29. Section 25299 of the Health and Safety Code is amended to read:

25299. (a) Any operator of an underground tank system shall be liable for a civil penalty of not less than five hundred dollars ($500) or more than five thousand dollars ($5,000) for each underground storage tank for each day of violation for any of the following violations:

(1) Operating an underground tank system which has not been issued a permit, in violation of this chapter.

(2) Violation of any of the applicable requirements of the permit issued for the operation of the underground tank system.

(3) Failure to maintain records, as required by this chapter.

(4) Failure to report an unauthorized release, as required by Sections 25294 and 25295.

(5) Failure to properly close an underground tank system, as required by Section 25298.

(6) Violation of any applicable requirement of this chapter or any regulation adopted by the board pursuant to Section 25299.3.

(7) Failure to permit inspection or to perform any monitoring, testing, or reporting required pursuant to Section 25288 or 25289.

(8) Making any false statement, representation, or certification in any application, record, report, or other document submitted or required to be maintained pursuant to this chapter.

(9) Tampering with or otherwise disabling automatic leak detection devices or alarms.

(b) Any owner of an underground tank system shall be liable for a civil penalty of not less than five hundred dollars ($500) or more than five thousand dollars ($5,000) per day for each underground storage tank, for each day of violation, for any of the following violations:

(1) Failure to obtain a permit as specified by this chapter.

(2) Failure to repair or upgrade an underground tank system in accordance with this chapter.

(3) Abandonment or improper closure of any underground tank system subject to this chapter.

(4) Knowing failure to take reasonable and necessary steps to assure compliance with this chapter by the operator of an underground tank system.

(5) Violation of any applicable requirement of the permit issued for operation of the underground tank system.

(6) Violation of any applicable requirement of this chapter or any regulation adopted by the board pursuant to Section 25299.3.

(7) Failure to permit inspection or to perform any monitoring, testing, or reporting required pursuant to Section 25288 or 25289.

(8) Making any false statement, representation, or certification in any application, record, report, or other document submitted or required to be maintained pursuant to this chapter.

(c) Any person who intentionally fails to notify the board or the local agency when required to do so by this chapter or who submits false information in a permit application, amendment, or renewal, pursuant to Section 25286, is liable for a civil penalty of not more than five thousand dollars ($5,000) for each underground storage tank for which notification is not given or false information is submitted.

(d) (1) Any person who violates any corrective action requirement established by, or issued pursuant to, Section 25296.10 is liable for a civil penalty of not more than ten thousand dollars ($10,000) for each underground storage tank for each day of violation.

(2) A civil penalty under this subdivision may be imposed in a civil action under this chapter, or may be administratively imposed by the board or a regional board pursuant to Article 2.5 (commencing with Section 13323) of Chapter 5 of Division 7 of the Water Code.

(e) Any person who violates Section 25292.3 is liable for a civil penalty of not more than five thousand dollars ($5,000) for each underground storage tank for each day of violation.

(f) (1) Any person who falsifies any monitoring records required by this chapter, or knowingly fails to report an unauthorized release, shall, upon conviction, be punished by a fine of not less than five thousand dollars ($5,000) or more than ten thousand dollars ($10,000), by imprisonment in the county jail for not to exceed one year, or by both that fine and imprisonment.

(2) Any person who intentionally disables or tampers with an automatic leak detection system in a manner that would prevent the automatic leak detection system from detecting a leak or alerting the owner or operator of the leak, shall, upon conviction, be punished by a fine of not less than five thousand dollars ($5,000) or more than ten thousand dollars ($10,000), by imprisonment in the county jail for not more than one year, or by both the fine and imprisonment.

(g) In determining both the civil and criminal penalties imposed pursuant to this section, the board, a regional board or the court, as the case may be, shall consider all relevant circumstances, including, but not limited to, the extent of harm or potential harm caused by the violation, the nature of the violation and the period of time over which it occurred, the frequency of past violations, and the corrective action, if any, taken by the person who holds the permit.

(h) Each civil penalty or criminal fine imposed pursuant to this section for any separate violation shall be separate, and in addition to, any other civil penalty or criminal fine imposed pursuant to this section or any other provision of law, except that no civil penalty shall be recovered under subdivision (d) for violations for which a civil penalty is recovered pursuant to Section 13268 or 13350 of the Water Code. The penalty or fine shall be paid to the treasury of the local agency or state, whichever is represented by the office of the city attorney, district attorney, or Attorney General bringing the action. All penalties or fines collected by the board or a regional board or collected on behalf of the board or a regional board by the Attorney General shall be deposited in the State Water Pollution Cleanup and Abatement Account in the State Water Quality Control Fund, and are available for expenditure by the board, upon appropriation, pursuant to Section 13441 of the Water Code.

(i) Paragraph (9) of subdivision (a) does not prohibit the owner or operator of an underground storage tank, or his or her designee, from maintaining, repairing, or replacing automatic leak detection devices or alarms associated with that tank.

SEC. 30. Section 25299.4 of the Health and Safety Code is amended to read:

25299.4. (a) (1) Any local agency may apply to the board for authority to implement design and construction standards for the containment of a hazardous substance in underground storage tanks which are in addition to those set forth in this chapter. The application shall include a description of the additional standards and a discussion of the need to implement them. The board shall approve the application if it finds, after an investigation and public hearing, that the local agency has demonstrated by clear and convincing evidence that the additional standards are necessary to adequately protect the soil and the beneficial uses of the waters of the state from unauthorized releases.

(2) The board shall make its determination within six months of the date of application for authority to implement additional standards. If the board's determination upholds the application for authority to implement additional standards, the standards shall be effective as of the date of the determination. If the board's determination does not uphold the application, the additional standards shall not go into effect.

(b) (1) Any permitholder or permit applicant may apply to the regional board having jurisdiction over the location of the permitholder's or applicant's facility for a site-specific variance from Section 25290.1, 25291, or 25292. A site-specific variance is an alternative procedure which is applicable in one local agency jurisdiction. Prior to applying to the regional board, the permitholder shall first contact the local agency pursuant to paragraph (5).

(2) The regional board shall hold a public hearing 60 days after the completion of any documents required by the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code).

(3) The regional board shall consider the local agency's and the city's, county's, or city and county's recommendations in rendering its decision. Failure of the local agency or city, county, or city and county to join in the variance application pursuant to paragraph (5) shall not affect the request of the applicant to proceed with the variance application.

(4) The regional board shall approve the variance if it finds, after investigation and public hearing, that the applicant has demonstrated by clear and convincing evidence either of the following:

(A) Because of the facility's special circumstances, not generally applicable to other facilities' property, including size, shape, design, topography, location, or surroundings, the strict application of Sections 25290.1, 25291, and 25292 is unnecessary to adequately protect the soil and beneficial uses of the waters of the state from an unauthorized release.

(B) Strict application of the standards of Sections 25290.1, 25291, and 25292 would create practical difficulties not generally applicable to other facilities or property and that the proposed alternative will adequately protect the soil and beneficial uses of the waters of the state from an unauthorized release.

(5) Before applying for a variance, the applicant shall contact the local agency to determine if a site-specific variance is required. If the local agency determines that a site-specific variance is required or does not act within 60 days, the applicant may proceed with the variance procedure in subdivision (a).

(6) At least 30 days before applying to the appropriate regional board, the applicant shall notify and request the city, county, or city and county to join the applicant in the variance application before the regional board.

(A) The city, county, or city and county shall provide notice of the receipt of that request to any person who has requested the notice.

(B) The local agency within the city, county, or city and county which has the jurisdiction for land use decisions shall have 30 days from completion of any documents required by the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code) to act on the applicant's request to join the applicant.

(c) Applicants requesting a variance pursuant to subdivision (b) shall pay a fee determined by the board to be necessary to recover the reasonable cost of administering subdivision (b).

(d) The permit issued for any underground storage tank issued a variance pursuant to subdivision (b) shall require compliance with any conditions prescribed by the board or a regional board in issuing the variance. The conditions prescribed by the board or regional board in the permit shall include any conditions necessary to assure compliance with any applicable requirements of the federal act.

(e) This section does not apply to or within any city or county which was exempt from implementing this chapter as of December 31, 1984.

SEC. 31. Section 25299.7 of the Health and Safety Code is amended to read:

25299.7. (a) The board is designated as the lead agency in the state for all purposes stated in the federal act and may exercise any powers which a state may exercise pursuant to the federal act.

(b) The board may prepare, as part of any program application submitted to the Environmental Protection Agency for state program approval pursuant to Section 6991c of Title 42 of the United States Code, any procedures and implementation plans necessary to assure compliance with the requirements for a state program implementing the federal act. These procedures and implementation plans may include, but are not limited to, procedures or implementation plans with respect to investigation, compliance monitoring, enforcement, public participation, and sharing of information among local agencies, the board, and the Environmental Protection Agency. If the Environmental Protection Agency approves of the state program, the board, the regional boards, and each local agency shall administer this chapter in accordance with these procedures and implementation plans where required by the memorandum of agreement executed by the board and the Environmental Protection Agency. These procedures and implementation plans shall also apply to any public agency or official who brings a civil enforcement action pursuant to this chapter, and to any city or county specified in Section 25299.1, to the extent required by the memorandum of agreement. The board's approval of the program application and memorandum of agreement is not subject to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(c) The board shall adopt, pursuant to Section 25299.3, any regulations necessary to obtain state program approval pursuant to Section 6991c of Title 42 of the United States Code. The board shall adopt these regulations 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, 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, any emergency regulations adopted by the board in furtherance of this section shall be filed with, but may not be repealed by, the Office of Administrative Law and shall remain in effect until revised by the board.

SEC. 32. Section 25299.8 is added to the Health and Safety Code, to read:

25299.8. The repeal and addition of Section 25292.3 and the amendment of Section 25284 by the act adding this section during the 2002 portion of the 2001–02 Regular Session, to eliminate the requirement to acquire and display an upgrade compliance certificate, do not constitute a bar to any action, whether administrative, civil, or criminal, brought for a violation of the law that occurred prior to January 1, 2003.

SEC. 33. Section 25299.36 of the Health and Safety Code is amended to read:

25299.36. The board, a regional board, or a local agency may undertake or contract for corrective action in response to an unauthorized release from an underground storage tank that is subject to this chapter, pursuant to subdivision (f) of Section 25296.10 or if a situation exists that requires prompt action by the board, a regional board, or local agency to protect human health or the environment. At the request of the board or a regional board, the Department of General Services may enter into a contract on behalf of the board or a regional board and acting as the agent of the board or a regional board. Notwithstanding any other provision of law, if a situation requires prompt action by the board or a regional board to protect human health or the environment, the board or a regional board may enter into oral contracts for this work, and the contracts, whether written or oral, may include provisions for equipment rental and, in addition, the furnishing of labor and materials necessary to accomplish the work. These contracts for corrective action by the board or a regional board are exempt from approval by the Department of General Services if the situation requires prompt action to protect human health or the environment.

SEC. 34. Section 25299.37 of the Health and Safety Code is repealed.

SEC. 35. Section 25299.37.1 of the Health and Safety Code is amended and renumbered to read:

25296.15. (a) No closure letter shall be issued pursuant to this chapter unless all of the following conditions are met:

(1) The soil or groundwater, or both, where applicable, at the site have been tested for MTBE.

(2) The results of that testing are known to the regional board.

(3) The board, the regional board, or the local agency makes the finding specified in subdivision (g) of Section 25296.10.

(b) Paragraphs (1) and (2) of subdivision (a) do not apply to a closure letter for a tank case for which the board, a regional board, or local agency determines that the tank has only contained diesel or jet fuel.

SEC. 36. Section 25299.37.2 of the Health and Safety Code is repealed.

SEC. 37. Section 25299.38 is added to the Health and Safety Code, to read:

25299.38. (a) The local agency, the board, or the regional board shall advise and work with the owner, operator, or other responsible party on the opportunity to seek preapproval of corrective action costs pursuant to Section 2811.4 of Title 23 of the California Code of Regulations or any successor regulation. Regional board staff and local agency staff shall work with the responsible party and fund staff to obtain preapproval for the responsible party. The fund staff shall grant or deny a request for preapproval within 30 calendar days after the date a request is received. If fund staff denies a request for preapproval or fails to act within 30 calendar days after receiving the request, an owner, operator, or other responsible party who has prepared a work plan that has been reviewed and accepted pursuant to paragraph (3) of subdivision (c) of Section 25296.10, and is denied preapproval of corrective action costs for one or more of the actions required by the work plan, may petition the board for review of the request for preapproval. The board shall review the petition pursuant to Section 25299.56, and for that purpose the petition for review of a request for preapproval of corrective action costs shall be reviewed by the board in the same manner as a petition for review of an unpaid claim.

(b) If the board receives a petition for review pursuant to subdivision (a), the board shall review the request for preapproval and grant or deny the request pursuant to this subdivision and subdivision (c). The board shall deny the request for preapproval if the board makes one of the following findings:

(1) The petitioner is not eligible to file a claim pursuant to Article 6 (commencing with Section 25299.50).

(2) The petitioner failed to submit one or more of the documents required by the regulations adopted by the board governing preapproval.

(3) The petitioner failed to obtain three bids or estimates for corrective action costs and, under the circumstances pertaining to the corrective action, there is no valid reason to waive the three-bid requirement pursuant to the regulations adopted by the board.

(c) If the board does not deny the request for preapproval pursuant to subdivision (b), the board shall grant the request for preapproval. However, the board may modify the request by denying preapproval of

corrective action costs or reducing the preapproval amount of those costs for any action required by the work plan, if the board finds that the fund staff has demonstrated either of the following:

(1) The amount of corrective action reimbursement requested for the action is not reasonable. In determining if the fund staff has demonstrated that the amount of reimbursement requested for an action is not reasonable, the board shall use, when available, recent experience with bids or estimates for similar actions.

(2) The action required in the work plan is, in all likelihood, not necessary for the corrective action to comply with the requirements of subdivisions (a) and (b) of Section 25296.10 and the corrective action regulations adopted pursuant to Section 25299.3.

SEC. 38. Section 25299.38.1 of the Health and Safety Code is repealed.

SEC. 39. Section 25299.39 of the Health and Safety Code is repealed.

SEC. 40. Section 25299.39.1 of the Health and Safety Code is amended and renumbered to read:

25296.35. (a) The board shall develop, implement, and maintain a system for storing and retrieving data from cases involving discharges of petroleum from underground storage tanks to allow regulatory agencies and the general public to use historic data in making decisions regarding permitting, land use, and other matters. The system shall be accessible to government agencies and the general public. A site included in the data system shall be clearly designated as having no residual contamination if, at the time a closure letter is issued for the site pursuant to Section 25296.10 or at any time after that closure letter is issued, the board determines that no residual contamination remains on the site.

(b) For purposes of this section, ''residual contamination'' means the petroleum that remains on a site after a corrective action has been carried out and the cleanup levels established by the corrective action plan for the site, pursuant to subdivision (g) of Section 2725 of Title 23 of the California Code of Regulations, have been achieved.

SEC. 41. Section 25299.39.2 of the Health and Safety Code is amended to read:

25299.39.2. (a) The manager responsible for the fund shall notify tank owners or operators who have an active letter of commitment that has been in an active status for five years or more and shall review the case history of their tank case on an annual basis unless otherwise notified by the tank owner or operator within 30 days of the notification. The manager, with approval of the tank owner or operator, may make a recommendation to the board for closure. The board may close the tank case or require the closure of a tank case at a site under the jurisdiction

of a regional board or a local agency implementing a local oversight program under Section 25297.1 if the board determines that corrective action at the site is in compliance with all of the requirements of subdivisions (a) and (b) of Section 25296.10 and the corrective action regulations adopted pursuant to Section 25299.3. If a tank case is at a site under the jurisdiction of a local agency that is not implementing a local oversight program under Section 25297.1, the board may recommend to the local agency that the case be closed.

(b) Any aggrieved person may, not later than 30 days from the date of final action by the board, pursuant to subdivision (a), file with the superior court a petition for writ of mandate for review of the decision. If the aggrieved person does not file a petition for writ of mandate within the time provided by this subdivision, a board decision shall not be subject to review by any court. Section 1094.5 of the Code of Civil Procedure shall govern proceedings for which petitions are filed pursuant to this subdivision. For purposes of subdivision (c) of Section 1094.5 of the Code of Civil Procedure, the court shall uphold the decision if the decision is based upon substantial evidence in light of the whole record.

(c) The authority provided under this section does not limit a person's ability to petition the board for review under any other state law.

SEC. 42. Section 25299.39.3 of the Health and Safety Code is amended to read:

25299.39.3. The board, a regional board, or local agency shall be permitted reasonable access to property owned or possessed by an owner, operator, or responsible party as necessary to perform corrective action pursuant to Section 25299.36. The access shall be obtained with the consent of the owner or possessor of the property or, if the consent is withheld, with a warrant duly issued pursuant to the procedure described 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 public health or safety, or the environment, the board, a regional board, or local agency may enter the property without consent or the issuance of a warrant.

SEC. 43. Section 25299.50.1 of the Health and Safety Code is amended to read:

25299.50.1. (a) For purposes of this section, ''fire safety agency'' means a city fire department, county fire department, city and county fire department, fire protection district, a joint powers authority formed for the purpose of providing fire protection services, or any other local agency that normally provides fire protection services.

(b) The Fire Safety Subaccount is hereby created in the Underground Storage Tank Cleanup Fund, for expenditure by the board to pay a claim described in paragraph (4) of subdivision (b) of Section 25299.52 that

was filed before January 1, 2000, by a fire safety agency. Except as provided in subdivision (d), the board shall pay a claim filed by a fire safety agency only from funds appropriated from the Fire Safety Subaccount.

(c) The sum of five million dollars ($5,000,000) of the moneys in the fund derived from the sources described in paragraphs (1) to (4), inclusive, of subdivision (b) of Section 25299.50 is hereby transferred from the fund to the Fire Safety Subaccount, and appropriated therefrom to the board, for expenditure pursuant to this section for a claim filed by a fire safety agency specified in subdivision (b).

(d) The unpaid amount of any claim filed by a fire safety agency specified in subdivision (b), for which a closure letter has not been issued pursuant to subdivision (g) of Section 25296.10 on or before January 1, 2006, shall not be payable from the Fire Safety Subaccount but shall revert to the priority ranking for claims specified in Section 25299.52.

(e) The payment of claims pursuant to this section shall not affect the board's payment of claims filed pursuant to paragraph (1), (2), or (3) of subdivision (b) of Section 25299.52.

(f) Any funds remaining in the Fire Safety Subaccount on January 1, 2006, shall be transferred to the fund.

(g) 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. 44. Section 25299.51 of the Health and Safety Code is amended to read:

25299.51. The board may expend the money in the fund for all the following purposes:

(a) In addition to the purposes specified in subdivisions (c), (d), and (e), for the costs of implementing this chapter and for implementing Section 25296.10 for a tank that is subject to this chapter.

(b) To pay for the administrative costs of the State Board of Equalization in collecting the fee imposed by Article 5 (commencing with Section 25299.40).

(c) To pay for the reasonable and necessary costs of corrective action pursuant to Section 25299.36, up to one million five hundred thousand dollars ($1,500,000) per occurrence. The Legislature may appropriate the money in the fund for expenditure by the board, without regard to fiscal year, for prompt action in response to any unauthorized release.

(d) To pay for the costs of an agreement for the abatement of, and oversight of the abatement of, an unauthorized release of hazardous substances from underground storage tanks, by a local agency, as authorized by Section 25297.1 or by any other provision of law, except that, for the purpose of expenditure of these funds, only underground

storage tanks, as defined in Section 25299.24, shall be the subject of the agreement.

(e) To pay for the costs of cleanup and oversight of unauthorized releases at abandoned tank sites. The board shall not expend more than 25 percent of the total amount of money collected and deposited in the fund annually for the purposes of this subdivision and subdivision (h).

(f) To pay claims pursuant to Section 25299.57.

(g) To pay, upon order of the Controller, for refunds pursuant to Part 26 (commencing with Section 50101) of Division 2 of the Revenue and Taxation Code.

(h) To pay for the reasonable and necessary costs of corrective action pursuant to subdivision (f) of Section 25296.10, in response to an unauthorized release from an underground storage tank subject to this chapter.

(i) To pay claims pursuant to Section 25299.58.

(j) To pay for expenditures by the board associated with discovering violations of, and enforcing, or assisting in the enforcement of, the requirements of Chapter 6.7 (commencing with Section 25280) with regard to petroleum underground storage tanks.

SEC. 45. Section 25299.53 of the Health and Safety Code is amended to read:

25299.53. (a) A regional board or a local agency taking, or contracting for, corrective action pursuant to subdivision (f) of Section 25296.10 in response to an unauthorized release from an underground storage tank subject to this chapter shall, before commencing the corrective action, take both of the following actions:

(1) The regional board or local agency shall notify the board of the planned corrective action. If an owner, operator, or other responsible party is taking the corrective action in accordance with Section 25296.10, the regional board or local agency shall not initiate a corrective action pursuant to this chapter or Chapter 6.7 (commencing with Section 25280).

(2) If an owner, operator, or other responsible party is not taking or has not taken the action specified in paragraph (1), the regional board or local agency shall submit the estimated cost of the corrective action to the board, which shall approve or disapprove the reasonableness of the cost estimate. The regional board or local agency shall obtain approval of the corrective action and the cost estimate before taking, or contracting for, any corrective action.

(b) If the board approves the request of the regional board or local agency made pursuant to paragraph (2) of subdivision (a), the board shall, after making the determination specified in subdivision (c), pay for the costs of corrective action performed by a regional board, local agency, or qualified contractor.

(c) The board shall not make any payment pursuant to subdivision (b) unless the board determines that the owner, operator, or other responsible party of the tank has failed or refused to comply with a final order for corrective action issued pursuant to Section 25296.10 with respect to the unauthorized release of petroleum from the tank.

(d) Upon making any payment to a regional board or local agency pursuant to subdivision (b), the board shall recover the amount of payment pursuant to Section 25299.70.

SEC. 46. Section 25299.54 of the Health and Safety Code is amended to read:

25299.54. (a) Except as provided in subdivisions (b), (c), (d), (e), (g), and (h), an owner or operator, required to perform corrective action pursuant to Section 25296.10, or an owner or operator who, as of January 1, 1988, is required to perform corrective action, who has initiated this action in accordance with Division 7 (commencing with Section 13000) of the Water Code, who is undertaking corrective action in compliance with waste discharge requirements or other orders issued pursuant to Division 7 (commencing with Section 13000) of the Water Code, or Chapter 6.7 (commencing with Section 25280), may apply to the board for satisfaction of a claim filed pursuant to this article.

(b) A person who has failed to comply with Article 3 (commencing with Section 25299.30) is ineligible to file a claim pursuant to this section.

(c) Any owner or operator of an underground storage tank containing petroleum is ineligible to file a claim pursuant to this section if the person meets both of the following conditions:

(1) The person knew, before January 1, 1988, of the unauthorized release of petroleum which is the subject of the claim.

(2) The person did not initiate, on or before June 30, 1988, any corrective action in accordance with Division 7 (commencing with Section 13000) of the Water Code concerning the release, or the person did not, on or before June 30, 1988, initiate corrective action in accordance with Chapter 6.7 (commencing with Section 25280) or the person did not initiate action on or before June 30, 1988, to come into compliance with waste discharge requirements or other orders issued pursuant to Division 7 (commencing with Section 13000) of the Water Code concerning the release.

(d) An owner or operator who violates Section 25296.10 or any corrective action order, directive, notification, or approval order issued pursuant to this chapter, Chapter 6.7 (commencing with Section 25280), or Division 7 (commencing with Section 13000) of the Water Code, is liable for any corrective action costs that result from the owner's or operator's violation and is ineligible to file a claim pursuant to this section.

(e) Notwithstanding this chapter, a person who owns a tank located underground that is used to store petroleum may apply to the board for satisfaction of a claim, and the board may pay the claim pursuant to Section 25299.57 without making the findings specified in paragraph (3) of subdivision (d) of Section 25299.57 if all of the following apply:

(1) The tank meets one of the following requirements:

(A) The tank is located at the residence of a person on property used exclusively for residential purposes at the time of discovery of the unauthorized release of petroleum.

(B) The tank owner demonstrates that the tank is located on property that, on and after January 1, 1985, is not used for agricultural purposes, the tank is of a type specified in subparagraph (B) of paragraph (1) of subdivision (y) of Section 25281, and the petroleum in the tank is used solely for the purposes specified in subparagraph (B) of paragraph (1) of subdivision (y) of Section 25281 on and after January 1, 1985.

(2) The tank is not a tank described in subparagraph (A) of paragraph (1) of subdivision (y) of Section 25281 and the tank is not used on or after January 1, 1985, for the purposes specified in that subparagraph.

(3) The claimant has complied with Section 25299.31 and the permit requirements of Chapter 6.7 (commencing with Section 25280), or the claimant is not subject to the requirements of those provisions.

(f) Whenever the board has authorized the prepayment of a claim pursuant to Section 25299.57, and the amount of money available in the fund is insufficient to pay the claim, the owner or operator shall remain obligated to undertake the corrective action in accordance with Section 25296.10.

(g) The board shall not reimburse a claimant for any eligible costs for which the claimant has been, or will be, compensated by another person. This subdivision does not affect reimbursement of a claimant from the fund under either of the following circumstances:

(1) The claimant has a written contract, other than an insurance contract, with another person that requires the claimant to reimburse the person for payments the person has provided the claimant pending receipt of reimbursement from the fund.

(2) An insurer has made payments on behalf of the claimant pursuant to an insurance contract and either of the following apply:

(A) The insurance contract explicitly coordinates insurance benefits with the fund and requires the claimant to do both of the following:

(i) Maintain the claimant's eligibility for reimbursement of costs pursuant to this chapter by complying with all applicable eligibility requirements.

(ii) Reimburse the insurer for costs paid by the insurer pending reimbursement of those costs by the fund.

(B) The claimant received a letter of commitment prior to June 30, 1999, for the occurrence and the claimant is required to reimburse the insurer for any costs paid by the insurer pending reimbursement of those costs by the fund.

(h) (1) Except as provided in paragraph (2), a person who purchases or otherwise acquires real property on which an underground storage tank or tank specified in subdivision (e) is situated shall not be reimbursed by the board for a cost attributable to an occurrence that commenced prior to the acquisition of the real property if both of the following conditions apply:

(A) The purchaser or acquirer knew, or in the exercise of reasonable diligence would have discovered, that an underground storage tank or tank specified in subdivision (e) was located on the real property being acquired.

(B) Any person who owned the site or owned or operated an underground storage tank or tank specified in subdivision (e) at the site during or after the occurrence and prior to acquisition by the purchaser or acquirer would not have been eligible for reimbursement from the fund.

(2) Notwithstanding paragraph (1), if the claim is filed on or after January 1, 2003, the board may reimburse the eligible costs claimed by a person who purchases or otherwise acquires real property on which an underground storage tank or tank specified in subdivision (e) is situated, if all of the following conditions apply:

(A) The claimant is the owner or operator of the tank that had an occurrence that commenced prior to the owner's acquisition of the real property.

(B) The claimant satisfies all eligibility requirements, other than those specified in paragraph (1).

(C) The claimant is not an affiliate of any person whose act or omission caused or would cause ineligibility for the fund.

(3) If the board reimburses a claim pursuant to paragraph (2), any person specified in subparagraph (B) of paragraph (1), other than a person who is ineligible for reimbursement from the fund solely because the property was acquired from another person who was ineligible for reimbursement from the fund, shall be liable for the amount paid from the fund. The Attorney General, upon request of the board, shall bring a civil action to recover the liability imposed under this paragraph. All money recovered by the Attorney General under this paragraph shall be deposited in the fund.

(4) The liability established pursuant to paragraph (3) does not limit or supersede liability under any other provision of state or federal law, including common law.

(5) For purposes of this subdivision, the following definitions shall apply:

(A) ''Affiliate'' means a person who has one or more of the following relationships with another person:

(i) Familial relationship.

(ii) Fiduciary relationship.

(iii) A relationship of direct or indirect control or shared interests.

(B) Affiliates include, but are not limited to, any of the following:

(i) Parent corporation and subsidiary.

(ii) Subsidiaries that are owned by the same parent corporation.

(iii) Business entities involved in a reorganization, as defined in Section 181 of the Corporations Code.

(iv) Corporate officer and corporation.

(v) Shareholder that owns a controlling block of voting stock and the corporation.

(vi) Partner and the partnership.

(vii) Member and a limited liability company.

(viii) Franchiser and franchisee.

(ix) Settlor, trustee, and beneficiary of a trust.

(x) Debtor and bankruptcy trustee or debtor-in-possession.

(xi) Principal and agent.

(C) ''Familial relationship'' means relationships between family members, including, and limited to, a husband, wife, child, stepchild, parent, grandparent, grandchild, brother, sister, stepbrother, stepsister, stepmother, stepfather, mother-in-law, father-in-law, brother-in-law, sister-in-law, daughter-in-law, son-in-law, and, if related by blood, uncle, aunt, niece, or nephew.

(i) The Legislature finds and declares that the changes made to subparagraph (A) of paragraph (1) of subdivision (e) by Chapter 1290 of the Statutes of 1992 is declaratory of existing law.

(j) The Legislature finds and declares that the amendment of subdivisions (a) and (g) by Chapter 328 of the Statutes of 1999 is declaratory of existing law.

SEC. 47. Section 25299.55 of the Health and Safety Code is amended to read:

25299.55. The board shall prescribe appropriate forms and procedures for claims filed pursuant to Section 25299.54 that shall include, at a minimum, all of the following:

(a) A provision requiring the claimant to make a sworn verification of the claim to the best of the claimant's knowledge.

(b) A full description, supported by appropriate evidence from government agencies, of the unauthorized release of petroleum into the environment from an underground storage tank claimed to be the subject

of the third-party judgment specified in Section 25299.58 or the corrective action performed pursuant to Section 25296.10.

(c) Certification by the claimant of all costs that have been, or will be, incurred in undertaking corrective action after January 1, 1988.

SEC. 48. Section 25299.57 of the Health and Safety Code is amended to read:

25299.57. (a) If the board makes the determination specified in subdivision (d), the board may only pay for the costs of a corrective action that exceeds the level of financial responsibility required to be obtained pursuant to Section 25299.32, but not more than one million five hundred thousand dollars ($1,500,000) for each occurrence. In the case of an owner or operator who, as of January 1, 1988, was required to perform corrective action, who initiated that corrective action in accordance with Division 7 (commencing with Section 13000) of the Water Code or Chapter 6.7 (commencing with Section 25280), and who is undertaking the corrective action in compliance with waste discharge requirements or other orders issued pursuant to Division 7 (commencing with Section 13000) of the Water Code or Chapter 6.7 (commencing with Section 25280), the owner or operator may apply to the board for satisfaction of a claim filed pursuant to this article. The board shall notify claimants applying for satisfaction of claims from the fund of eligibility for reimbursement in a prompt and timely manner and that a letter of credit or commitment that will obligate funds for reimbursement shall follow the notice of eligibility as soon thereafter as possible.

(b) (1) For claims eligible for reimbursement pursuant to subdivision (c) of Section 25299.55, the claimant shall submit the actual cost of corrective action to the board, which shall either approve or disapprove the costs incurred as reasonable and necessary. At least 15 days before the board proposes to disapprove the reimbursement of corrective action costs that have been incurred on the grounds that the costs were unreasonable or unnecessary, the board shall issue a notice advising the claimant and the lead agency of the proposed disallowance, to allow review and comment.

(2) The board shall not reject any actual costs of corrective action in a claim solely on the basis that the invoices submitted fail to sufficiently detail the actual costs incurred, if all of the following applies:

(A) Auxiliary documentation is provided that documents to the board's satisfaction that the invoice is for necessary corrective action work.

(B) The costs of corrective action work in the claim are reasonably commensurate with similar corrective action work performed during the same time period covered by the invoice for which reimbursement is sought.

(C) The invoices include a brief description of the work performed, the date that the work was performed, the vendor, and the amount.

(c) For claims eligible for prepayment pursuant to subdivision (c) of Section 25299.55, the claimant shall submit the estimated cost of the corrective action to the board, which shall approve or disapprove the reasonableness of the cost estimate.

(d) Except as provided in subdivision (j), a claim specified in subdivision (a) may be paid if the board makes all of the following findings:

(1) There has been an unauthorized release of petroleum into the environment from an underground storage tank.

(2) The claimant is required to undertake or contract for corrective action pursuant to Section 25296.10, or, as of January 1, 1988, the claimant has initiated corrective action in accordance with Division 7 (commencing with Section 13000) of the Water Code.

(3) (A) Except as provided in subparagraph (B), the claimant has complied with Section 25299.31 and the permit requirements of Chapter 6.7 (commencing with Section 25280).

(B) All claimants who file their claim on or after January 1, 1994, and all claimants who filed their claim prior to that date but are not eligible for a waiver of the permit requirement pursuant to board regulations in effect on the date of the filing of the claim, and who did not obtain or apply for any permit required by subdivision (a) of Section 25284 by January 1, 1990, shall be subject to subparagraph (A) regardless of the reason or reasons that the permit was not obtained or applied for. However, on and after January 1, 1994, the board may waive the provisions of subparagraph (A) as a condition for payment from the fund if the board finds all of the following:

(i) The claimant was unaware of the permit requirement prior to January 1, 1990, and there was no intent to intentionally avoid the permit requirement or the fees associated with the permit.

(ii) Prior to submittal of the application to the fund, the claimant has complied with Section 25299.31 and has obtained and paid for all permits currently required by this paragraph.

(iii) Prior to submittal of the application to the fund, the claimant has paid all fees, interest, and penalties imposed pursuant to Article 5 (commencing with Section 25299.40) and Part 26 (commencing with Section 50101) of Division 2 of the Revenue and Taxation Code for the underground storage tank that is the subject of the claim.

(C) (i) A claimant exempted pursuant to subparagraph (B) shall obtain a level of financial responsibility twice as great as the amount which the claimant is otherwise required to obtain pursuant to subdivision (a) of Section 25299.32.

(ii) The board may waive the requirements of clause (i) if the claimant can demonstrate that the conditions specified in clauses (i) to (iii), inclusive, of subparagraph (B) were satisfied prior to the causing of any contamination. That demonstration may be made through a certification issued by the permitting agency based on site and tank tests at the time of permit application or in any other manner acceptable to the board.

(D) The board shall rank all claims resubmitted pursuant to subparagraph (B) lower than all claims filed before January 1, 1994, within their respective priority classes specified in subdivision (b) of Section 25299.52.

(4) The board has approved either the costs incurred for the corrective action pursuant to subdivision (b) or the estimated costs for corrective action pursuant to subdivision (c).

(5) The claimant has paid all fees, interest, and penalties imposed pursuant to Article 5 (commencing with Section 29299.40) and Part 26 (commencing with Section 50101) of Division 2 of the Revenue and Taxation Code for the underground storage tank that is the subject of the claim.

(e) The board shall provide the claimant, whose cost estimate has been approved, a letter of credit authorizing payment of the costs from the fund.

(f) The claimant may submit a request for partial payment to cover the costs of corrective action performed in stages, as approved by the board.

(g) (1) Any claimant who submits a claim for payment to the board shall submit multiple bids for prospective costs as prescribed in regulations adopted by the board pursuant to Section 25299.77.

(2) Any claimant who submits a claim to the board for the payment of professional engineering and geologic work shall submit multiple proposals and fee estimates, as required by the regulations adopted by the board pursuant to Section 25299.77. The claimant's selection of the provider of these services is not required to be based on the lowest estimated fee, if the fee estimate conforms with the range of acceptable costs established by the board.

(3) Any claimant who submits a claim for payment to the board for remediation construction contracting work shall submit multiple bids, as required in the regulations adopted by the board pursuant to Section 25299.77.

(4) Paragraphs (1), (2), and (3) do not apply to a tank owned or operated by a public agency if the prospective costs are for private professional services within the meaning of Chapter 10 (commencing with Section 4525) of Division 5 of Title 1 of the Government Code and those services are procured in accordance with the requirements of that chapter.

(h) The board shall provide, upon the request of a claimant, assistance to the claimant in the selection of contractors retained by the claimant to conduct reimbursable work related to corrective actions. The board shall develop a summary of expected costs for common remedial actions. This summary of expected costs may be used by claimants as a guide in the selection and supervision of consultants and contractors.

(i) The board shall pay, within 60 days from the date of receipt of an invoice of expenditures, all costs specified in the work plan developed pursuant to Section 25296.10, and all costs that are otherwise necessary to comply with an order issued by a local, state, or federal agency.

(j) (1) The board shall pay a claim of not more than three thousand dollars ($3,000) per occurrence for regulatory technical assistance to an owner or operator who is otherwise eligible for reimbursement under this chapter.

(2) For the purposes of this subdivision, regulatory technical assistance is limited to assistance from a person, other than the claimant, in the preparation and submission of a claim to the fund. Regulatory technical assistance does not include assistance in connection with proceedings under Section 25296.40, 25299.39.2, or 25299.56 or any action in court.

(k) (1) Notwithstanding any other provision of this section, the board shall pay a claim for the costs of corrective action to a person who owns property on which is located a release from a petroleum underground storage tank that has been the subject of a completed corrective action and for which additional corrective action is required because of additionally discovered contamination from the previous release, only if the person who carried out the earlier and completed corrective action was eligible for, and applied for, reimbursement pursuant to subdivision (b), and only to the extent that the amount of reimbursement for the earlier corrective action did not exceed the amount of reimbursement authorized by subdivision (a). Reimbursement to a claimant on a reopened site shall occur when funds are available, and reimbursement commitment shall be made ahead of any new letters of commitment to be issued, as of the date of the reopening of the claim, if funding has occurred on the original claim, in which case funding shall occur at the time it would have occurred under the original claim.

(2) For purposes of this subdivision, a corrective action is completed when the local agency or regional board with jurisdiction over the site or the board issues a closure letter pursuant to subdivision (g) of Section 25296.10.

SEC. 49. Section 25299.58 of the Health and Safety Code is amended to read:

25299.58. (a) Except as provided in subdivision (d), if the board makes the determination specified in subdivision (b), the board may only reimburse those costs that are related to the compensation of third parties for bodily injury and property damages and that exceed the level of financial responsibility required to be obtained pursuant to Section 25299.32, but not more than one million dollars ($1,000,000) for each occurrence.

(b) A claim may be paid if the board makes all of the following findings:

(1) There has been an unauthorized release of petroleum into the environment from an underground storage tank.

(2) The claimant has been ordered to pay a settlement or final judgment for third-party bodily injury or property damage arising from operating an underground storage tank.

(3) (A) Except as provided in subparagraph (B), the claimant has complied with Section 25299.31 and the permit requirements of Chapter 6.7 (commencing with Section 25280).

(B) All claimants who file their claim on or after January 1, 1994, and all claimants who filed their claim prior to that date but are not eligible for a waiver of the permit requirement pursuant to board regulations in effect on the date of the filing of the claim, and who did not obtain or apply for any permit required by subdivision (a) of Section 25284 by January 1, 1990, shall be subject to subparagraph (A) regardless of the reason or reasons that the permit was not obtained or applied for. However, on and after January 1, 1994, the board may waive the provisions of subparagraph (A) as a condition for payment from the fund if the board finds all of the following:

(i) The claimant was unaware of the permit requirement prior to January 1, 1990, and there was no intent to intentionally avoid the permit requirement or the fees associated with the permit.

(ii) Prior to submittal of the application to the fund, the claimant has complied with Section 25299.31 and has obtained and paid for all permits currently required by this paragraph.

(iii) Prior to submittal of the application to the fund, the claimant has paid all fees, interest, and penalties imposed pursuant to Article 5 (commencing with Section 25299.40) and Part 26 (commencing with Section 50101) of Division 2 of the Revenue and Taxation Code for the underground storage tank that is the subject of the claim.

(C) (i) A claimant exempted pursuant to subparagraph (B) shall obtain a level of financial responsibility in an amount twice as great as the amount which the claimant is otherwise required to obtain pursuant to subdivision (a) of Section 25299.32.

(ii) The board may waive the requirements of clause (i) if the claimant can demonstrate that the conditions specified in clauses (i) to (iii),

inclusive, of subparagraph (B) were satisfied prior to any contamination having been caused. That demonstration may be made through a certification issued by the permitting agency based on site and tank tests at the time of permit application or in any other manner as may be acceptable to the board.

(D) The board shall rank all claims resubmitted pursuant to subparagraph (B) lower than all claims filed before January 1, 1994, within their respective priority classes specified in subdivision (b) of Section 25299.52.

(4) The claimant is required to undertake or contract for corrective action pursuant to Section 25296.10, or, as of January 1, 1988, the claimant has initiated corrective action in accordance with Division 7 (commencing with Section 13000) of the Water Code or Chapter 6.7 (commencing with Section 25280).

(5) The claimant has paid all fees, interest, and penalties imposed pursuant to Article 5 (commencing with Section 29299.40) and Part 26 (commencing with Section 50101) of Division 2 of the Revenue and Taxation Code for the underground storage tank that is the subject of the claim.

(c) A claimant may be reimbursed by the fund for compensation of third parties for only the following:

(1) Medical expenses.

(2) Actual lost wages or business income.

(3) Actual expenses for remedial action to remedy the effects of damage to the property of the third party caused by the unauthorized release of petroleum from an underground storage tank.

(4) The fair market value of the property rendered permanently unsuitable for use by the unauthorized release of petroleum from an underground storage tank.

(d) The board shall pay a claim submitted pursuant to subdivision (e) of Section 25299.54 for the costs related to the compensation of third parties for bodily injury and property damages that exceed the level of financial responsibility required to be obtained pursuant to paragraph (2) of subdivision (a) of Section 25299.32, but not more than one million dollars ($1,000,000) for each occurrence.

SEC. 50. Section 25299.70 of the Health and Safety Code is amended to read:

25299.70. (a) Any costs incurred and payable from the fund pursuant to subdivisions (c), (e), and (h) of Section 25299.51 shall be recovered by the Attorney General, upon request of the board, from the owner or operator of the underground storage tank which released the petroleum and which is the subject of those costs or from any other responsible party.

(b) The liability of an owner or operator shall be the full and total costs specified in subdivision (a) if the owner or operator has not complied with the requirements of Article 3 (commencing with Section 25299.30) or has violated Section 25296.10 or any corrective action order, directive, notification or approval order issued pursuant to this chapter, Chapter 6.7 (commencing with Section 25280), or Division 7 (commencing with Section 13000) of the Water Code. The liability of a responsible party who is not an owner or operator shall be the full and total costs specified in subdivision (a).

(c) The amount of costs determined pursuant to this section shall be recoverable in a civil action. This section does not deprive a party of any defense the party may have.

(d) All money recovered by the Attorney General pursuant to this section shall be deposited in the fund.

(e) The amount of the costs constitutes a lien on the affected property upon service of a copy of the notice of lien on the owner and upon the recordation of a notice of lien, if the notice identifies the property on which the condition was abated, the amount of the lien, and the owner of record of the property, in the office of the county recorder of the county in which the property is located. Upon recordation, the lien shall have the same force, effect, and priority as a judgment lien, except that it attaches only to the property posted and described in the notice of lien, and shall continue for 10 years from the time of the recording of the notice, unless sooner released or otherwise discharged. Not later than 45 days from the date of receipt of a notice of lien, the owner may petition the court for an order releasing the property from the lien or reducing the amount of the lien. In that court action, the governmental agency that incurred the cleanup costs shall establish that the costs were reasonable and necessary. The lien may be foreclosed by an action brought by the board for a money judgment.

SEC. 51. Section 25395.44 of the Health and Safety Code is repealed.

SEC. 52. Section 25395.44 is added to the Health and Safety Code, to read:

25395.44. (a) Notwithstanding any other provision of law, the agency, the secretary, the state, their respective employees and agents, and any of the state's other political subdivisions or employees thereof, shall not be liable to any person for any of the following:

(1) Any acts or omissions by the agency, the secretary, the state, their respective employees and agents, and any of the state's other political subdivisions or employees thereof, in implementing this article.

(2) Any acts or omissions by an insurance company selected to provide prenegotiated environmental insurance products pursuant to subdivision (b) of Section 25395.41.

(3) Any acts or omissions by any person that purchases a prenegotiated environmental insurance product made available pursuant to this article.

(b) The immunity from liability set forth in subdivision (a) specifically includes, but is not limited to, immunity if an insurance company selected to provide prenegotiated environmental insurance products pursuant to subdivision (b) of Section 25395.41 does any of the following:

(1) Cancels, rescinds, or otherwise terminates its contract with the secretary.

(2) Fails, for any reason, to compensate an insured for a loss covered by a policy.

(3) Delays payment to an insured, or otherwise breaches a duty or covenant imposed by law or required by a policy or contract with an insured that purchased an environmental insurance product pursuant to this article.

(c) The immunity set forth in this section is in addition to other immunities and defenses otherwise available to the agency, the secretary, the state, their respective employees and agents, and any of the state's political subdivisions and employees thereof.

(d) In implementing this article, the agency, the secretary, the state, their respective employees and agents, and any of the state's other political subdivisions and employees thereof, may not:

(1) Be construed to be an insurer, as defined in Section 23 of the Insurance Code, an insurance agent, as defined in Sections 31 and 1621 of the Insurance Code, an insurance solicitor, as defined in Sections 34 and 1624 of the Insurance Code, or an insurance broker, as defined in Sections 33 and 1623 of the Insurance Code.

(2) Be construed to be transacting insurance, as defined in Section 35 of the Insurance Code.

(3) Be required to obtain a license or other authorization pursuant to any provision of the Insurance Code.

SEC. 53. Section 25404 of the Health and Safety Code is amended to read:

25404. (a) For purposes of this chapter, the following terms shall have the following meanings:

(1) (A) ''Certified Unified Program Agency'' or ''CUPA'' means the agency certified by the secretary to implement the unified program specified in this chapter within a jurisdiction.

(B) ''Participating Agency'' or ''PA'' means a state or local agency that has a written agreement with the CUPA pursuant to subdivision (d) of Section 25404.3, and is approved by the secretary, to implement or enforce one or more of the unified program elements specified in subdivision (c), in accordance with Sections 25404.1 and 25404.2.

(C) ''Unified Program Agency'' or ''UPA'' means the CUPA, or its participating agencies to the extent each PA has been designated by the CUPA, pursuant to a written agreement, to implement or enforce a particular unified program element specified in subdivision (c). The UPAs have the responsibility and authority to implement and enforce the requirements listed in subdivision (c), and the regulations adopted to implement the requirements listed in subdivision (c), to the extent provided by Chapter 6.5 (commencing with Section 25100), Chapter 6.67 (commencing with Section 25270), Chapter 6.7 (commencing with Section 25280), Chapter 6.95 (commencing with Section 25500), and Sections 25404.1 and 25404.2. After a CUPA has been certified by the secretary, the unified program agencies and the state agencies carrying out responsibilities under this chapter shall be the only agencies authorized to enforce the requirements listed in subdivision (c) within the jurisdiction of the CUPA.

(2) ''Department'' means the Department of Toxic Substances Control.

(3) ''Minor violation'' means the failure of a person to comply with any requirement or condition of any applicable law, regulation, permit, information request, order, variance, or other requirement, whether procedural or substantive, of the unified program that the UPA is authorized to implement or enforce pursuant to this chapter, and that does not otherwise include any of the following:

(A) A violation that results in injury to persons or property, or that presents a significant threat to human health or the environment.

(B) A knowing willful or intentional violation.

(C) A violation that is a chronic violation, or that is committed by a recalcitrant violator. In determining whether a violation is chronic or a violator is recalcitrant, the UPA shall consider whether there is evidence indicating that the violator has engaged in a pattern of neglect or disregard with respect to applicable regulatory requirements.

(D) A violation that results in an emergency response from a public safety agency.

(E) A violation that enables the violator to benefit economically from the noncompliance, either by reduced costs or competitive advantage.

(F) A class I violation as provided in Section 25117.6.

(G) A class II violation committed by a chronic or a recalcitrant violator, as provided in Section 25117.6.

(H) A violation that hinders the ability of the UPA to determine compliance with any other applicable local, state, or federal rule, regulation, information request, order, variance, permit, or other requirement.

(4) ''Secretary'' means the Secretary for Environmental Protection.

(5) ''Unified program facility'' means all contiguous land and structures, other appurtenances, and improvements on the land that are subject to the requirements listed in subdivision (c).

(6) ''Unified program facility permit'' means a permit issued pursuant to this chapter. For the purposes of this chapter, a unified program facility permit encompasses the permitting requirements of Section 25284, and any permit or authorization requirements under any local ordinance or regulation relating to the generation or handling of hazardous waste or hazardous materials, but does not encompass the permitting requirements of a local ordinance that incorporates provisions of the Uniform Fire Code or the Uniform Building Code.

(b) The secretary shall adopt implementing regulations and implement a unified hazardous waste and hazardous materials management regulatory program, which shall be known as the unified program, after holding an appropriate number of public hearings throughout the state. The unified program shall be developed in close consultation with the director, the Director of the Office of Emergency Services, the State Fire Marshal, the executive officers and chairpersons of the State Water Resources Control Board and the California regional water quality control boards, the local health officers, local fire services, and other appropriate officers of interested local agencies, and affected businesses and interested members of the public, including environmental organizations.

(c) The unified program shall consolidate the administration of the following requirements, and shall, to the maximum extent feasible within statutory constraints, ensure the coordination and consistency of any regulations adopted pursuant to those requirements:

(1) (A) Except as provided in subparagraphs (B) and (C), the requirements of Chapter 6.5 (commencing with Section 25100), and the regulations adopted by the department pursuant thereto, applicable to hazardous waste generators, and persons operating pursuant to a permit-by-rule, conditional authorization, or conditional exemption, pursuant to Chapter 6.5 (commencing with Section 25100) or the regulations adopted by the department.

(B) The unified program shall not include the requirements of paragraph (3) of subdivision (c) of Section 25200.3, the requirements of Sections 25200.10 and 25200.14, and the authority to issue an order under Sections 25187 and 25187.1, with regard to those portions of a unified program facility that are subject to one of the following:

(i) A corrective action order issued by the department pursuant to Section 25187.

(ii) An order issued by the department pursuant to Chapter 6.8 (commencing with Section 25300) or Chapter 6.85 (commencing with Section 25396).

(iii) A remedial action plan approved pursuant to Chapter 6.8 (commencing with Section 25300) or Chapter 6.85 (commencing with Section 25396).

(iv) A cleanup and abatement order issued by a California regional water quality control board pursuant to Section 13304 of the Water Code, to the extent that the cleanup and abatement order addresses the requirements of the applicable section or sections listed in this subparagraph.

(v) Corrective action required under subsection (u) of Section 6924 of Title 42 of the United States Code or subsection (h) of Section 6928 of Title 42 of the United States Code.

(vi) An environmental assessment pursuant to Section 25200.14 or a corrective action pursuant to Section 25200.10 or paragraph (3) of subdivision (c) of Section 25200.3, that is being overseen by the department.

(C) The unified program shall not include the requirements of Chapter 6.5 (commencing with Section 25100), and the regulations adopted by the department pursuant thereto, applicable to persons operating transportable treatment units, except that any required notice regarding transportable treatment units shall also be provided to the CUPAs.

(2) The requirement of subdivision (c) of Section 25270.5 for owners and operators of aboveground storage tanks to prepare a spill prevention control and countermeasure plan.

(3) The requirements of Chapter 6.7 (commencing with Section 25280) concerning underground storage tanks, except for the responsibilities assigned to the State Water Resources Control Board pursuant to Section 25297.1, and the requirements of any underground storage tank ordinance adopted by a city or county.

(4) The requirements of Article 1 (commencing with Section 25500) of Chapter 6.95 concerning hazardous material release response plans and inventories.

(5) The requirements of Article 2 (commencing with Section 25531) of Chapter 6.95, concerning the accidental release prevention program.

(6) The requirements of subdivisions (b) and (c) of Section 80.103 of the Uniform Fire Code, as adopted by the State Fire Marshal pursuant to Section 13143.9 of the Health and Safety Code, concerning hazardous material management plans and inventories.

(d) To the maximum extent feasible within statutory constraints, the secretary shall consolidate, coordinate, and make consistent these requirements of the unified program with other requirements imposed by other federal, state, regional, or local agencies upon facilities regulated by the unified program.

(e) (1) The secretary shall establish standards applicable to CUPAs, participating agencies, state agencies, and businesses specifying the data to be collected and submitted by unified program agencies in administering the programs listed in subdivision (c). Those standards shall incorporate any standard developed under Section 25503.3.

(2) The secretary shall establish an electronic geographic information management system capable of receiving all data collected by the unified program agencies pursuant to paragraph (1). The secretary shall make all nonconfidential data available on the Internet.

(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. 54. Section 25404 is added to the Health and Safety Code, to read:

25404. (a) For purposes of this chapter, the following terms shall have the following meanings:

(1) (A) ''Certified Unified Program Agency'' or ''CUPA'' means the agency certified by the secretary to implement the unified program specified in this chapter within a jurisdiction.

(B) ''Participating Agency'' or ''PA'' means a state or local agency that has a written agreement with the CUPA pursuant to subdivision (d) of Section 25404.3, and is approved by the secretary, to implement or enforce one or more of the unified program elements specified in subdivision (c), in accordance with Sections 25404.1 and 25404.2.

(C) ''Unified Program Agency'' or ''UPA'' means the CUPA, or its participating agencies to the extent each PA has been designated by the CUPA, pursuant to a written agreement, to implement or enforce a particular unified program element specified in subdivision (c). The UPAs have the responsibility and authority to implement and enforce the requirements listed in subdivision (c), and the regulations adopted to implement the requirements listed in subdivision (c), to the extent provided by Chapter 6.5 (commencing with Section 25100), Chapter 6.67 (commencing with Section 25270), Chapter 6.7 (commencing with Section 25280), Chapter 6.95 (commencing with Section 25500), and Sections 25404.1 and 25404.2. After a CUPA has been certified by the secretary, the unified program agencies and the state agencies carrying out responsibilities under this chapter shall be the only agencies authorized to enforce the requirements listed in subdivision (c) within the jurisdiction of the CUPA.

(2) ''Department'' means the Department of Toxic Substances Control.

(3) ''Secretary'' means the Secretary for Environmental Protection.

(4) ''Unified program facility'' means all contiguous land and structures, other appurtenances, and improvements on the land that are subject to the requirements listed in subdivision (c).

(5) ''Unified program facility permit'' means a permit issued pursuant to this chapter. For the purposes of this chapter, a unified program facility permit encompasses the permitting requirements of Section 25284, and any permit or authorization requirements under any local ordinance or regulation relating to the generation or handling of hazardous waste or hazardous materials, but does not encompass the permitting requirements of a local ordinance that incorporates provisions of the Uniform Fire Code or the Uniform Building Code.

(b) The secretary shall adopt implementing regulations and implement a unified hazardous waste and hazardous materials management regulatory program, which shall be known as the unified program, after holding an appropriate number of public hearings throughout the state. The unified program shall be developed in close consultation with the director, the Director of the Office of Emergency Services, the State Fire Marshal, the executive officers and chairpersons of the State Water Resources Control Board and the California regional water quality control boards, the local health officers, local fire services, and other appropriate officers of interested local agencies, and affected businesses and interested members of the public, including environmental organizations.

(c) The unified program shall consolidate the administration of the following requirements, and shall, to the maximum extent feasible within statutory constraints, ensure the coordination and consistency of any regulations adopted pursuant to those requirements:

(1) (A) Except as provided in subparagraphs (B) and (C), the requirements of Chapter 6.5 (commencing with Section 25100), and the regulations adopted by the department pursuant thereto, applicable to hazardous waste generators, and persons operating pursuant to a permit-by-rule, conditional authorization, or conditional exemption, pursuant to Chapter 6.5 (commencing with Section 25100) or the regulations adopted by the department.

(B) The unified program shall not include the requirements of paragraph (3) of subdivision (c) of Section 25200.3, the requirements of Sections 25200.10 and 25200.14, and the authority to issue an order under Sections 25187 and 25187.1, with regard to those portions of a unified program facility that are subject to one of the following:

(i) A corrective action order issued by the department pursuant to Section 25187.

(ii) An order issued by the department pursuant to Chapter 6.8 (commencing with Section 25300) or Chapter 6.85 (commencing with Section 25396).

(iii) A remedial action plan approved pursuant to Chapter 6.8 (commencing with Section 25300) or Chapter 6.85 (commencing with Section 25396).

(iv) A cleanup and abatement order issued by a California regional water quality control board pursuant to Section 13304 of the Water Code, to the extent that the cleanup and abatement order addresses the requirements of the applicable section or sections listed in this subparagraph.

(v) Corrective action required under subsection (u) of Section 6924 of Title 42 of the United States Code or subsection (h) of Section 6928 of Title 42 of the United States Code.

(vi) An environmental assessment pursuant to Section 25200.14 or a corrective action pursuant to Section 25200.10 or paragraph (3) of subdivision (c) of Section 25200.3, that is being overseen by the department.

(C) The unified program shall not include the requirements of Chapter 6.5 (commencing with Section 25100), and the regulations adopted by the department pursuant thereto, applicable to persons operating transportable treatment units, except that any required notice regarding transportable treatment units shall also be provided to the CUPAs.

(2) The requirement of subdivision (c) of Section 25270.5 for owners and operators of aboveground storage tanks to prepare a spill prevention control and countermeasure plan.

(3) The requirements of Chapter 6.7 (commencing with Section 25280) concerning underground storage tanks, except for the responsibilities assigned to the State Water Resources Control Board pursuant to Section 25297.1, and the requirements of any underground storage tank ordinance adopted by a city or county.

(4) The requirements of Article 1 (commencing with Section 25501) of Chapter 6.95 concerning hazardous material release response plans and inventories.

(5) The requirements of Article 2 (commencing with Section 25531) of Chapter 6.95, concerning the accidental release prevention program.

(6) The requirements of subdivisions (b) and (c) of Section 80.103 of the Uniform Fire Code, as adopted by the State Fire Marshal pursuant to Section 13143.9 of the Health and Safety Code, concerning hazardous material management plans and inventories.

(d) To the maximum extent feasible within statutory constraints, the secretary shall consolidate, coordinate, and make consistent these requirements of the unified program with other requirements imposed by other federal, state, regional, or local agencies upon facilities regulated by the unified program.

(e) (1) The secretary shall establish standards applicable to CUPAs, participating agencies, state agencies, and businesses specifying the data to be collected and submitted by unified program agencies in administering the programs listed in subdivision (c). Those standards shall incorporate any standard developed under Section 25503.3.

(2) The secretary shall establish an electronic geographic information management system capable of receiving all data collected by the unified program agencies pursuant to paragraph (1). The secretary shall make all nonconfidential data available on the Internet.

(f) This section shall become operative January 1, 2006.

SEC. 55. Section 25404.1.1 is added to the Health and Safety Code, to read:

25404.1.1. (a) If the unified program agency determines that a person has committed, or is committing, a violation of any law, regulation, permit, information request, order, variance, or other requirement that the UPA is authorized to enforce or implement pursuant to this chapter, the UPA may issue an administrative enforcement order requiring that the violation be corrected and imposing an administrative penalty, in accordance with the following:

(1) Except as provided in paragraph (5), if the order is for a violation of Chapter 6.5 (commencing with Section 25100), the violator shall be subject to the applicable administrative penalties provided by that chapter.

(2) If the order is for a violation of Chapter 6.7 (commencing with Section 25280), the violator shall be subject to the applicable civil penalties provided in subdivisions (a), (b), and (c) of Section 25299.

(3) If the order is for a violation of Article 1 (commencing with Section 25500) of Chapter 6.95, the violator shall be subject to a penalty that is consistent with the administrative penalties imposed pursuant to Section 25514.5.

(4) If the order is for a violation of Article 2 (commencing with Section 25531) of Chapter 6.95, the violator shall be subject to a penalty that is consistent with the administrative penalties imposed pursuant to Section 25540 or 25540.5.

(5) If the order is for a violation of Section 25270.5, the violator shall be liable for a penalty of not more than five thousand dollars ($5,000) for each day on which the violation continues. If the violator commits a second or subsequent violation, a penalty of not more than ten thousand dollars ($10,000) for each day on which the violation continues may be imposed.

(b) In establishing a penalty amount and ordering that the violation be corrected pursuant to this section, the UPA shall take into consideration the nature, circumstances, extent, and gravity of the violation, the violator's past and present efforts to prevent, abate, or

clean up conditions posing a threat to the public health or safety or the environment, the violator's ability to pay the penalty, and the deterrent effect that the imposition of the penalty would have on both the violator and the regulated community.

(c) Any order issued pursuant to this section shall be served by personal service or certified mail and shall inform the person served of the right to a hearing. If the UPA issues an order pursuant to this section, the order shall state whether the hearing procedure specified in paragraph (2) of subdivision (e) may be requested by the person receiving the order.

(d) Any person served with an order pursuant to this section who has been unable to resolve any violation with the UPA, may within 15 days after service of the order, request a hearing pursuant to subdivision (e) by filing with the UPA a notice of defense. The notice shall be filed with the office that issued the order. A notice of defense shall be deemed filed within the 15-day period provided by this subdivision if it is postmarked within that 15-day period. If no notice of defense is filed within the time limits provided by this subdivision, the order shall become final.

(e) Except as provided in subparagraph (B) of paragraph (2), a person requesting a hearing on an order issued by the UPA under this section may select the hearing officer specified in either paragraph (1) or (2) in the notice of defense filed with the UPA pursuant to subdivision (d). If a notice of defense is filed but no hearing officer is selected, the UPA may select the hearing officer. Within 90 days of receipt of the notice of defense by the UPA, the hearing shall be scheduled using one of the following:

(1) An administrative law judge of the Office of Administrative Hearings of the Department of General Services, who shall conduct the hearing in accordance with Chapter 4.5 (commencing with Section 11400) of Part 1 of Division 3 of Title 2 of the Government Code, and the UPA shall have all the authority granted to an agency by those provisions.

(2) (A) A hearing officer designated by the UPA, who shall conduct the hearing in accordance with Chapter 4.5 (commencing with Section 11400) of Part 1 of Division 3 of Title 2 of the Government Code, and the UPA shall have all the authority granted to an agency by those provisions. When a hearing is conducted by a UPA hearing officer pursuant to this paragraph, the UPA shall issue a decision within 60 days after the hearing is conducted. Each hearing officer designated by a UPA shall meet the requirements of Section 11425.30 of the Government Code and any other applicable restriction.

(B) A UPA, or a person requesting a hearing on an order issued by a UPA may select the hearing process specified in this paragraph in a notice of defense filed pursuant to subdivision (d) only if the UPA has,

as of the date the order is issued pursuant to subdivision (c), selected a designated hearing officer and established a program for conducting a hearing in accordance with this paragraph.

(f) The hearing decision issued pursuant to paragraph (2) of subdivision (e) shall be effective and final upon issuance by the UPA. A copy of the decision shall be served by personal service or by certified mail upon the party served with the order, or their representative, if any.

(g) Any provision of an order issued under this section, except the imposition of an administrative penalty, shall take effect upon issuance by the UPA if the UPA finds that the violation or violations of law associated with that provision may pose an imminent and substantial endangerment to the public health or safety or the environment. A request for a hearing shall not stay the effect of that provision of the order pending a hearing decision. However, if the UPA determines that any or all provisions of the order are so related that the public health or safety or the environment can be protected only by immediate compliance with the order as a whole, the order as a whole, except the imposition of an administrative penalty, shall take effect upon issuance by the UPA. A request for a hearing shall not stay the effect of the order as a whole pending a hearing decision.

(h) A decision issued pursuant to paragraph (2) of subdivision (e) may be reviewed by a court pursuant to Section 11523 of the Government Code. In all proceedings pursuant to this section, the court shall uphold the decision of the UPA if the decision is based upon substantial evidence in the record as a whole. The filing of a petition for writ of mandate shall not stay any action required pursuant to this chapter or the accrual of any penalties assessed pursuant to this chapter. This subdivision does not prohibit the court from granting any appropriate relief within its jurisdiction.

(i) All administrative penalties collected from actions brought by a UPA pursuant to this section shall be paid to the UPA that imposed the penalty, and shall be deposited into a special account that shall be expended to fund the activities of the UPA in enforcing this chapter.

(j) The UPA shall consult with the district attorney, county counsel, or city attorney on the development of policies to be followed in exercising the authority delegated pursuant to this section as it relates to the authority of the UPA to issue orders.

(k) This section does not do any of the following:

(1) Otherwise affect the authority of a UPA to take any other action authorized by any other provision of law, except the UPA shall not require a person to pay a penalty pursuant to this section and pursuant to a local ordinance for the same violation.

(2) Restrict the power of a city attorney, district attorney, county counsel, or the Attorney General to bring, in the name of the people of California, any criminal proceeding otherwise authorized by law.

(3) Prevent the UPA from cooperating with, or participating in, a proceeding specified in paragraph (2).

SEC. 56. Section 25404.1.2 is added to the Health and Safety Code, to read:

25404.1.2. (a) (1) An authorized representative of the UPA, who in the course of conducting an inspection, detects a minor violation, shall take an enforcement action as to the minor violation only in accordance with this section.

(2) In any proceeding concerning an enforcement action taken pursuant to this section, there shall be a rebuttable presumption upholding the determination made by the UPA regarding whether the violation is a minor violation.

(b) A notice to comply shall be the only means by which a UPA may cite a minor violation, unless the person cited fails to correct the violation or fails to submit the certification of correction within the time period prescribed in the notice, in which case the UPA may take any enforcement action, including imposing a penalty, as authorized by this chapter.

(c) (1) A person who receives a notice to comply detailing a minor violation shall have not more than 30 days from the date of the notice to comply in which to correct any violation cited in the notice to comply. Within five working days of correcting the violation, the person cited or an authorized representative shall sign the notice to comply, certifying that any violation has been corrected, and return the notice to the UPA.

(2) A false certification that a violation has been corrected is punishable as a misdemeanor.

(3) The effective date of the certification that any violation has been corrected shall be the date that it is postmarked.

(d) If a notice to comply is issued, a single notice to comply shall be issued for all minor violations noted during the inspection, and the notice to comply shall list all of the minor violations and the manner in which each of the minor violations may be brought into compliance.

(e) If a person who receives a notice to comply pursuant to subdivision (a) disagrees with one or more of the alleged violations listed on the notice to comply, the person shall provide the UPA a written notice of disagreement along with the returned signed notice to comply. If the person disagrees with all of the alleged violations, the written notice of disagreement shall be returned in lieu of the signed certification of correction within 30 days of the date of issuance of the notice to comply. If the issuing agency takes administrative enforcement action

on the basis of the disputed violation, that action may be appealed in the same manner as any other alleged violation under Section 25404.1.1.

(f) This section may not be construed as doing any of the following:

(1) Preventing the reinspection of a facility to ensure compliance with this chapter or to ensure that minor violations cited in a notice to comply have been corrected and that the facility is in compliance with those laws and regulations within the jurisdiction of the UPA.

(2) Preventing the UPA from requiring a person to submit necessary documentation needed to support the person's claim of compliance pursuant to subdivision (c).

(3) Restricting the power of a city attorney, district attorney, county counsel, or the Attorney General to bring, in the name of the people of California, any criminal proceeding otherwise authorized by law.

(4) Preventing the UPA from cooperating with, or participating in, a proceeding specified in paragraph (3).

(g) 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. 57. Section 25514.5 of the Health and Safety Code is amended to read:

25514.5. (a) Notwithstanding Section 25514, any business that violates this article is liable to an administering agency for an administrative penalty, in an amount which shall be set by the governing body of the administering agency, but not greater than two thousand dollars ($2,000) for each day in which the violation occurs. If the violation results in, or significantly contributes to, an emergency, including a fire or health or medical problem requiring toxicological, health, or medical consultation, the business shall also be assessed the full cost of the county, city, fire district, local EMS agency designated pursuant to Section 1797.200, or poison control center as defined by Section 1797.97, emergency response, as well as the cost of cleaning up and disposing of the hazardous materials, or acutely hazardous materials.

(b) Notwithstanding Section 25514, any business that knowingly violates this article after reasonable notice of the violation is liable for an administrative penalty, in an amount which shall be set by the governing body of the administering agency, but not greater than five thousand dollars ($5,000) for each day in which the violation occurs.

(c) When an administering agency issues an enforcement order or assesses an administrative penalty, or both, for a violation of this article, the administering agency shall utilize the administrative enforcement procedures specified in Sections 25404.1.1 and 25404.1.2.

SEC. 58. Section 25514.6 of the Health and Safety Code is repealed.

SEC. 59. Section 25540 of the Health and Safety Code is amended to read:

25540. (a) Any stationary source that violates this article shall be civilly liable to the administering agency in an amount of not more than two thousand dollars ($2,000) for each day in which the violation occurs. If the violation results in, or significantly contributes to, an emergency, including a fire, the stationary source shall also be assessed the full cost of the county or city emergency response, as well as the cost of cleaning up and disposing of the hazardous materials. When an administering agency issues an enforcement order or assesses an administrative penalty, or both, for a violation of this chapter, the administering agency shall utilize the administrative enforcement procedures specified in Sections 25404.1.1 and 25404.1.2.

(b) Any stationary source that knowingly violates this article after reasonable notice of the violation shall be civilly liable to the administering agency in an amount not to exceed twenty-five thousand dollars ($25,000) for each day in which the violation occurs and upon conviction, may be punished by imprisonment in the county jail for not more than one year.

SEC. 60. Section 33459 of the Health and Safety Code is amended to read:

33459. For purposes of this article, the following terms shall have the following meanings:

(a) ''Department'' means the Department of Toxic Substances Control.

(b) ''Director'' means the Director of Toxic Substances Control.

(c) ''Hazardous substance'' means any hazardous substance as defined in subdivision (h) of Section 25281, and any reference to hazardous substance in the definitions referenced in this section shall be deemed to refer to hazardous substance, as defined in this subdivision.

(d) ''Local agency'' means a single local agency that is one of the following:

(1) A local agency authorized pursuant to Section 25283 to implement Chapter 6.7 (commencing with Section 25280) of, and Chapter 6.75 (commencing with Section 25299.10) of, Division 20.

(2) A local officer who is authorized pursuant to Section 101087 to supervise a remedial action.

(e) ''Qualified independent contractor'' means an independent contractor who is any of the following:

(1) An engineering geologist who is certified pursuant to Section 7842 of the Business and Professions Code.

(2) A geologist who is registered pursuant to Section 7850 of the Business and Professions Code.

(3) A civil engineer who is registered pursuant to Section 6762 of the Business and Professions Code.

(f) ''Release'' means any release, as defined in Section 25320.

(g) ''Remedy'' or ''remove'' means any action to assess, evaluate, investigate, monitor, remove, correct, clean up, or abate a release of a hazardous substance or to develop plans for those actions. ''Remedy'' includes any action set forth in Section 25322 and ''remove'' includes any action set forth in Section 25323.

(h) ''Responsible party'' means any person described in subdivision (a) of Section 25323.5 of this code or any person specified in subdivision (a) of Section 13304 of the Water Code who is subject to an order issued pursuant to that section.

SEC. 61. Section 116367 is added to the Health and Safety Code, to read:

116367. (a) The Legislature finds and declares that oxygenated gasoline has contaminated groundwater and surface water used for drinking water purposes. The Legislature further declares that it is in the public interest to provide funding to pay for corrective action needed to protect public health and the environment as a result of oxygenate contamination of drinking water.

(b) For the purposes of this section, the following terms have the following meanings:

(1) ''Drinking water fund'' or ''fund'' means the Drinking Water Treatment and Research Fund created pursuant to subdivision (c).

(2) ''Financial hardship'' means a public water system does not have sufficient resources not otherwise dedicated for a specified purpose, including, but not limited to, debt service requirements, to pay for necessary treatment works, conduct an investigation into the source of contamination, or acquire alternate drinking water supplies and leave sufficient reserves available to enable the system owner or operator to address economic uncertainties to pay for contingencies.

(3) ''Oxygenate'' has the same meaning as oxygenate as defined in Section 25299.97.

(4) ''Public water system'' means a public water system, as defined in Section 116275.

(5) ''Drinking water supply'' means a source of drinking water that has been approved by the department.

(c) The Drinking Water Treatment and Research Fund is hereby created in the State Treasury.

(d) Notwithstanding Section 13340 of the Government Code, moneys in the fund are continuously appropriated, without regard to fiscal years, to the department for all of the following purposes:

(1) To make payments to a public water system for the incremental costs of treating groundwater and surface water used for drinking water

purposes that has been contaminated by an oxygenate if the level of contamination exceeds the lowest of any primary or secondary drinking water standard adopted pursuant to Section 116365 or 116610. Treatment for surface water shall be for surface water that supplies water to a treatment facility for a water supply system that serves domestic uses.

(2) To make payments to a public water system for the costs of investigating the possible source and extent of contamination when the department determines that an oxygenate is detected at any level in groundwater supplies utilized by a public water system for drinking water purposes as provided in subdivision (k). Costs eligible for payment under this paragraph may include the costs of acquiring alternate drinking water supplies if the well is required by the department or a California regional water quality control board to be shut down or its use curtailed during the investigation. Costs eligible for payment under this paragraph include the costs of connecting a public water system to another public water system or constructing a new drinking water well.

(3) To make payments to a public water system for the incremental costs of acquiring alternate drinking water supplies to replace supplies contaminated by an oxygenate at a level that exceeds the lowest of any primary or secondary drinking water standard adopted pursuant to Section 116365 or 116610. Costs eligible for payment under this paragraph include the costs of connecting a public water system to another public water system or constructing a new drinking water well.

(4) To conduct research and develop cost-effective treatment technologies to treat drinking water contaminated by an oxygenate to meet primary or secondary drinking water standards and effective strategies to protect drinking water sources from contamination by oxygenates. The department shall not expend more than one million dollars ($1,000,000) annually for these purposes and may enter into cooperative agreements with federal and state agencies, local agencies, or other persons to conduct research and development activities.

(5) To pay the administrative costs, not to exceed 5 percent, for the department to administer this section.

(6) To make payments to a public water system for the incremental costs of acquiring an alternate drinking water supply where the department has determined that a drinking water supply would become contaminated by an oxygenate at a level that exceeds the lowest of any primary or secondary drinking water standard if the public water system continues to use the drinking water supply.

(e) The department shall report annually to the Governor and to the Legislature on any moneys provided to a public water system pursuant to this section.

(f) (1) The department shall be reimbursed by a public water system that has received funds pursuant to this section, to the extent that the public water system receives payment from any source to cover the costs for which it received funding under this section. The public water system shall aggressively pursue cost recovery from responsible persons and, upon recovery, or within five years from the date on which the initial payment is received, whichever occurs first, shall reimburse the department for funds received pursuant to this section, unless the public water system demonstrates that despite all reasonable efforts, recovery from a responsible party is not possible, or that a responsible party cannot be identified. The department shall transfer any reimbursements received from a public water system into the fund or the Underground Storage Tank Cleanup Fund, whichever fund provided the moneys.

(2) Notwithstanding paragraph (1), the department may not require a public water system to pursue cost recovery from responsible persons for funds received pursuant to this section that total one million dollars ($1,000,000) or less.

(g) The department may make payments pursuant to paragraphs (1), (2), and (3) of subdivision (d) without regard to when the contamination occurred or when costs for treating or investigating the source of contamination or acquiring replacement water were incurred, except that a public water system may not receive more than three million dollars ($3,000,000) from the drinking water fund in any fiscal year unless the public water system makes a showing of financial hardship.

(h) (1) The department may make payments pursuant to paragraphs (1), (2), (3), and (6) of subdivision (d), without requiring a public water system to first incur expenditures, if the department determines that a situation exists that requires prompt action by the public water system to protect human health or the environment, or the public water system makes a showing of financial hardship.

(2) Upon a showing of financial hardship, pursuant to paragraph (1), the public water system shall present the department with a work plan that specifies the estimated costs of treatment, constructing a new drinking water well, or obtaining an alternate water supply. The estimated costs of treatment or constructing a new well to provide replacement water shall be prepared by a registered civil engineer or other registered professional. The estimated costs for acquiring an alternate water supply, other than a new well, shall be substantiated by an identification of necessary capital facilities to convey the water to the public water system and a written offer by another entity to provide the alternate water supply.

(3) The department shall prescribe forms and procedures for claims filed pursuant to this section as necessary to ascertain eligibility for payment and validity of incremental costs based on generally accepted

accounting principles. The department shall not require an applicant to prepare an economic feasibility study regarding the acquisition of an alternate water supply. The department may require a description of site-specific information, including the origin of contamination, the petroleum products released, and the status of cleanup and abatement activities at potential leaking underground storage tank sites if that information is available to the applicant.

(4) The department shall provide payment within 60 days of receiving a claim filed pursuant to this section.

(5) A claim shall be deemed true and correct if not audited by the department within three years of payment.

(i) The department, in evaluating claims submitted for payment from the fund, shall consider the findings of the University of California report regarding the assessment undertaken pursuant to Section 3 of Chapter 816 of the Statutes of 1997, as those findings relate to the assessment of the human health and environmental risks and benefits, if any, associated with the use of MTBE in gasoline. In particular, the department shall consider findings in the report regarding the evaluations of the costs and effectiveness of treatment technologies available to remove MTBE from drinking water.

(j) Any funds transferred to the fund pursuant to Section 25299.99.1 may be used for the purposes of this section only if a public drinking water well has been contaminated by an oxygenate or if the department has determined that a drinking water supply would become contaminated by an oxygenate at a level that exceeds the lowest of any primary or secondary drinking water standard if the public water system continues to use the drinking supply and there is substantial evidence that the contamination was caused by a release from an underground storage tank.

(k) A public water system that determines that an oxygenate is detected at any level in groundwater supplies utilized by the public water system for drinking water purposes shall notify the department and a California regional water quality control board. The department or a regional board shall determine whether to shut down or curtail the use of a well within 30 days following receipt of notification from a public water system.

(*l*)(1) This section shall remain in effect only until January 1, 2010, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 2010, deletes or extends that date.

(2) The repeal of this section does not terminate any of the following rights, obligations or authorities, or any provision necessary to carry out these rights or obligations:

(A) The filing and payment of claims in the fund, until the moneys in the fund are exhausted. Upon exhaustion of the fund, any remaining claims shall be invalid.

(B) The resolution of any cost recovery action.

(m) Any commitment made by the department on or after January 1, 2001, to expend funds pursuant to former Section 116367, as it read on December 31, 2001, is hereby ratified. The department may approve any expenses incurred by water systems pursuant to these commitments.

SEC. 62. Section 13269 of the Water Code is amended to read:

13269. (a) On and after January 1, 2000, the provisions of subdivisions (a) and (b) of Section 13260, subdivision (a) of Section 13263, or subdivision (a) of Section 13264 may be waived by a regional board as to a specific discharge or a specific type of discharge if the waiver is not against the public interest. Waivers for specific types of discharges may not exceed five years in duration, but may be renewed by a regional board. The waiver shall be conditional and may be terminated at any time by the board.

(b) (1) A waiver in effect on January 1, 2000, shall remain valid until January 1, 2003, unless the regional board terminates that waiver prior to that date. All waivers that were valid on January 1, 2000, and granted an extension until January 1, 2003, and not otherwise terminated, may be renewed by a regional board in five-year increments.

(2) Notwithstanding paragraph (1), a waiver for an onsite sewage treatment system that is in effect on January 1, 2002, shall remain valid until June 30, 2004, unless the regional board terminates the waiver prior to that date. Any waiver for onsite sewage treatment systems adopted or renewed after June 30, 2004, shall be consistent with the applicable regulations or standards for onsite sewage treatment systems adopted or retained in accordance with Section 13291.

(c) Upon notification of the appropriate regional board of the discharge or proposed discharge, except as provided in subdivision (d), the provisions of subdivisions (a) and (b) of Section 13260, subdivision (a) of Section 13263, and subdivision (a) of Section 13264 shall not apply to discharge resulting from any of the following emergency activities:

(1) Immediate emergency work necessary to protect life or property or immediate emergency repairs to public service facilities necessary to maintain service as a result of a disaster in a disaster-stricken area in which a state of emergency has been proclaimed by the Governor pursuant to Chapter 7 (commencing with Section 8550) of Division 1 of Title 2 of the Government Code.

(2) Emergency projects undertaken, carried out, or approved by a public agency to maintain, repair, or restore an existing highway, as defined in Section 360 of the Vehicle Code, except for a highway

designated as an official state scenic highway pursuant to Section 262 of the Streets and Highways Code, within the existing right-of-way of the highway, damaged as a result of fire, flood, storm, earthquake, land subsidence, gradual earth movement, or landslide within one year of the damage. This paragraph does not exempt from this section any project undertaken, carried out, or approved by a public agency to expand or widen a highway damaged by fire, flood, storm, earthquake, land subsidence, gradual earth movement, or landslide.

(d) Subdivision (c) is not a limitation of the authority of a regional board under subdivision (a) to determine that any provision of this division shall not be waived or to establish conditions of a waiver. Subdivision (c) shall not apply to the extent that it is inconsistent with any waiver or other order or prohibition issued under this division.

(e) The regional boards and the state board shall require compliance with the conditions pursuant to which waivers are granted under this section.

(f) Prior to renewing any waiver for a specific type of discharge established under this section, the regional boards shall review the terms of the waiver policy at a public hearing. At the hearing, a regional board shall determine whether the discharge for which the waiver policy was established should be subject to general or individual waste discharge requirements.

SEC. 63. Section 13285 of the Water Code is amended to read:

13285. (a) Any discharge from a storage tank, pipeline, or other container of methyl tertiary-butyl ether (MTBE), or of any pollutant that contains MTBE, that poses a threat to drinking water, or to groundwater or surface water that may reasonably be used for drinking water, or to coastal waters shall be cleaned up to a level consistent with subdivisions (a) and (b) of Section 25296.10 of the Health and Safety Code.

(b) (1) No public water system, or its customers, shall be responsible for remediation or treatment costs associated with MTBE, or a product that contains MTBE. However, the public water system may, as necessary, incur MTBE remediation and treatment costs and include those costs in its customer rates and charges that are necessary to comply with drinking water standards or directives of the State Department of Health Services or other lawful authority. Any public water system that incurs MTBE remediation or treatment costs may seek recovery of those costs from parties responsible for the MTBE contamination, or from other available alternative sources of funds.

(2) If the public water system has included the costs of MTBE treatment and remediation in its customer rates and charges, and subsequently recovers all, or a portion of, its MTBE treatment and remediation costs from responsible parties or other available alternative sources of funds, it shall make an adjustment to its schedule of rates and

charges to reflect the amount of funding received from responsible parties or other available alternative sources of funds for MTBE treatment or remediation.

(3) Paragraph (1) shall not prevent the imposition of liability on any person for the discharge of MTBE if that liability is due to the conduct or status of that person independently of whether the person happens to be a customer of the public water system.

SEC. 64. 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 certified mail or in accordance with Article 3 (commencing with Section 415.10) of, and Article 4 (commencing with Section 416.10) of, Chapter 4 of Title 5 of Part 2 of the Code of Civil Procedure, and shall inform the party so served that a hearing before the regional board shall be conducted within 90 days after the party has been served. The person who has been issued a complaint may waive the right to a hearing.

(c) In proceedings under this article for imposition of administrative civil liability by the state board, the executive director of the state board shall issue the complaint and any hearing shall be before the state board, or before a member of the state board in accordance with Section 183, and shall be conducted not later than 90 days after the party has been served.

(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 certified mail or in accordance with Article 3 (commencing with Section 415.10) of, and Article 4 (commencing with Section 416.10) of, Chapter 4 of Title 5 of Part 2 of the Code of Civil Procedure upon the party served with the complaint and shall be provided to other persons who appeared at the hearing and requested a copy.

SEC. 65. Section 13365 of the Water Code is amended to read:

13365. (a) (1) For purposes of this article, unless the context otherwise requires, ''agency'' means the state board or a regional board.

(2) The terms used in this article shall have the same meaning as the definitions specified in the statutory authority under which the agency

takes any action subject to this article, except that, notwithstanding Section 25317 of the Health and Safety Code, for purposes of this article, ''hazardous substance'' includes a hazardous substance specified in subdivision (h) of Section 25281 of the Health and Safety Code.

(b) On or before July 1, 1997, the agency shall adopt a billing system for the agency's cost recovery of investigation, analysis, planning, implementation, oversight, or other activity related to the removal or remedial or corrective action of a release of a hazardous substance that includes both of the following:

(1) Billing rates and overhead rates by employee job classification.

(2) Standardized description of work tasks.

(c) Notwithstanding any other provision of law, after July 1, 1997, any charge imposed upon a responsible party by the agency, to compensate the agency for some, or all, of its costs incurred in connection with the agency's investigation, analysis, planning, implementation, oversight, or other activity related to a removal or remedial action or a corrective action to a release of a hazardous substance, shall not be assessed or collected unless all of the following requirements are met:

(1) Except as provided in subdivision (f), prior to commencing the work or service for which the charge is assessed, and at least annually thereafter if the work or service is continuing, the agency shall provide all of the following information to the responsible party:

(A) A detailed estimate of the work to be performed or services to be provided, including a statement of the expected outcome of that work, based upon data available to the agency at the time.

(B) The billing rates for all individuals and classes of employees expected to engage in the work or service.

(C) An estimate of all expected charges to be billed to the responsible party by the agency, including, but not limited to, any overhead assessments that the agency may be authorized to levy.

(2) (A) Invoices shall be issued not less than semiannually with appropriate incentives for prompt payment.

(B) Invoices shall be mailed to the correct person or persons for the responsible party or parties.

(C) Invoices shall provide a daily detail of work performed and time spent by each employee and contractor employee using the billing and overhead rates and the standardized description of work tasks adopted pursuant to subdivision (b).

(D) Invoices shall include the source and amount of all other charges.

(E) Invoices shall be supplemented with statements of any changes in rates and a justification for any changes.

(F) Invoices shall be reviewed for accuracy and appropriateness.

(3) Upon request and within a reasonable time, not to exceed 30 working days from the date of receipt of a request, the agency shall provide the responsible party with copies of time records and other materials supporting the invoice described in paragraph (2). No fees or charges may be assessed for the preparation and delivery of those copies pursuant to this section.

(4) The agency shall identify a party who is responsible for resolving disputes regarding the charges subject to this section and who is not responsible for, or performing, the work or service for which the charges are assessed.

(d) The agency may adjust the scope of the work or service, type of studies, or other tasks to be performed, based upon analyses necessary to accommodate new information regarding the extent of contamination of the site, and only after providing written notice of the change to the responsible party containing the information specified in paragraph (1) of subdivision (c).

(e) The agency may increase billing rates not more than once each calendar year, to the extent authorized by law. Any increase in billing rates or other charges, including, but not limited to, overhead charges, shall operate prospectively only, and shall take effect not sooner than 10 days from the date that written notice has been provided to the responsible party.

(f) (1) Paragraph (1) of subdivision (c) shall not apply when a situation exists that requires prompt action to protect human health or safety or the environment.

(2) Paragraph (1) of subdivision (c) does not apply with respect to those responsible parties who are not identified until after the beginning of a removal or remedial action or corrective action to a release of a hazardous substance.

SEC. 66. Section 13391.5 of the Water Code is amended to read:

13391.5. The definitions in this section govern the construction of this chapter.

(a) ''Enclosed bays'' means indentations along the coast which enclose an area of oceanic water within distinct headlands or harbor works. ''Enclosed bays'' include all bays where the narrowest distance between the headlands or outermost harbor works is less than 75 percent of the greatest dimension of the enclosed portion of the bay. ''Enclosed bays'' include, but are not limited to, Humboldt Bay, Bodega Harbor, Tomales Bay, Drake's Estero, San Francisco Bay, Morro Bay, Los Angeles-Long Beach Harbor, Upper and Lower Newport Bay, Mission Bay, and San Diego Bay. For the purposes of identifying, characterizing, and ranking toxic hot spots pursuant to this chapter, Monterey Bay and Santa Monica Bay shall also be considered to be enclosed bays.

(b) ''Estuaries'' means waters, including coastal lagoons, located at the mouths of streams which serve as mixing zones for fresh and ocean waters. Coastal lagoons and mouths of streams which are temporarily separated from the ocean by sandbars shall be considered as estuaries. Estuarine waters shall be considered to extend from a bay or the open ocean to a point upstream where there is no significant mixing of fresh water and sea water. Estuarine waters include, but are not limited to, the Sacramento-San Joaquin Delta, as defined in Section 12220, Suisun Bay, Carquinez Strait downstream to the Carquinez Bridge, and appropriate areas of the Smith, Mad, Eel, Noyo, Russian, Klamath, San Diego, and Otay Rivers.

(c) ''Health risk assessment'' means an analysis which evaluates and quantifies the potential human exposure to a pollutant that bioaccumulates or may bioaccumulate in edible fish, shellfish, or wildlife. ''Health risk assessment'' includes an analysis of both individual and population wide health risks associated with anticipated levels of human exposure, including potential synergistic effects of toxic pollutants and impacts on sensitive populations.

(d) ''Sediment quality objective'' means that level of a constituent in sediment which is established with an adequate margin of safety, for the reasonable protection of the beneficial uses of water or the prevention of nuisances.

(e) ''Toxic hot spots'' means locations in enclosed bays, estuaries, or any adjacent waters in the ''contiguous zone'' or the ''ocean,'' as defined in Section 502 of the Clean Water Act (33 U.S.C. Sec. 1362), the pollution or contamination of which affects the interests of the state, and where hazardous substances have accumulated in the water or sediment to levels which (1) may pose a substantial present or potential hazard to aquatic life, wildlife, fisheries, or human health, or (2) may adversely affect the beneficial uses of the bay, estuary, or ocean waters as defined in water quality control plans, or (3) exceeds adopted water quality or sediment quality objectives.

(f) ''Hazardous substances'' has the same meaning as defined in subdivision (h) of Section 25281 of the Health and Safety Code.

SEC. 67. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the 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, or because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service

mandated by this act, within the meaning of Section 17556 of the Government Code.

CHAPTER 1000

An act to amend Section 25515.2 of the Health and Safety Code, to amend Sections 14300, 14301, 14303, 14304, 14306, 14307, 14314, and 14315 of, to amend the heading of Title 13 (commencing with Section 14300) of Part 4 of, to amend the headings of Chapter 2 (commencing with Section 14304) and Chapter 3 (commencing with Section 14306) of Title 13 of Part 4 of, to amend and renumber the heading of Chapter 6 (commencing with Section 14314) of Title 13 of Part 4 of, to add Section 14308 to, to add Chapter 4 (commencing with Section 14309) to Title 13 of Part 4 of, and to repeal Chapter 4 (commencing with Section 14308) and Chapter 5 (commencing with Section 14309) of Title 13 of Part 4 of, the Penal Code, relating to environmental prosecution.

[Approved by Governor September 27, 2002. Filed with Secretary of State September 27, 2002.]

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

SECTION 1. Section 25515.2 of the Health and Safety Code is amended to read:

25515.2. (a) All criminal penalties collected pursuant to this chapter shall be apportioned in the following manner:

(1) Fifty percent shall be paid to the office of the city attorney, district attorney, or Attorney General, whichever office brought the action.

(2) Fifty percent shall be paid to the agency which is responsible for the investigation of the action.

(b) All civil penalties collected pursuant to this chapter shall be apportioned in the following manner:

(1) Fifty percent shall be paid to the office of the city attorney, district attorney, or Attorney General, whichever office brought the action.

(2) Fifty percent shall be paid to the agency responsible for the investigation of the action.

(c) If a reward is paid to a person pursuant to Section 25517, the amount of the reward shall be deducted from the amount of the criminal or civil penalty before the amount is apportioned pursuant to subdivisions (a) and (b).

SEC. 2. The heading of Title 13 (commencing with Section 14300) of Part 4 of the Penal Code is amended to read:

TITLE 13. LOCAL ENVIRONMENTAL ENFORCEMENT AND TRAINING PROGRAMS

SEC. 3. Section 14300 of the Penal Code is amended to read:

14300. (a) The Legislature finds and declares all of the following:

(1) The enforcement of California's environmental laws is essential to protect human health, the environment, and the state's economy.

(2) Fair and uniform enforcement of laws and regulations governing the environment benefits law abiding businesses, firms, and individuals.

(3) There is a need to better integrate enforcement of environmental laws into California's established criminal justice system.

(4) Local and state enforcement agencies can play an increasingly important role in protecting human health, the environment, and the state's economy through greater involvement in the enforcement of environmental laws.

(5) Prosecuting violators of environmental laws often requires special training to detect violations, understand complex laws, and prepare and present complicated enforcement cases.

(6) There is a need to support programs that assist local and state enforcement officials in prosecuting violations of environmental laws through the training of peace officers, investigators, firefighters, public prosecutors, and state and local environmental regulators.

(7) Fair and uniform enforcement of environmental laws is multidisciplinary and involves law enforcement, fire departments, state and local environmental regulators, and the offices of local and state public prosecutors.

(b) For purposes of this title, the following definitions shall apply:

(1) ''Account'' means the Environmental Enforcement and Training Account created pursuant to Section 14303.

(2) ''Commission'' means the Commission on Peace Officer Standards and Training.

(3) ''Agency'' means the California Environmental Protection Agency.

(4) ''Secretary'' means the Agency Secretary for the California Environmental Protection Agency or his or her designee.

(5) ''Environmental laws'' means state and federal environmental laws and regulations that impact public health and the environment, including, but not limited to, those that regulate toxic and carcinogenic materials, water quality, air quality, waste management, pesticides, and wildlife resources.

(6) ''Public prosecutor'' means district attorneys, city attorneys, city prosecutors, county counsels, and the Attorney General and his or her deputies.

(7) ''Environmental regulator'' means an employee of any state or local agency whose jurisdiction includes implementation, enforcement, or both implementation and enforcement of environmental laws.

(8) ''Environmental enforcement'' means the enforcement of environmental laws.

(c) This title shall be known and may be cited as the Environmental Enforcement and Training Act of 2002.

(d) It is the intent of the Legislature that the funds to implement this title, as specified in Section 14314, come from public and private contributions, and from the proceeds from any contributed state or federal court judgments, and that no funds be expended from the General Fund, other than from the Environmental Enforcement and Training Account, or other funds appropriated to, or authorized for expenditure by, the agency, to implement this title. It is the intent of the Legislature that the funds to implement this title shall be expended only from the account. It is the intent of the Legislature that funding provided from the account shall supplement, not supplant existing funding.

SEC. 4. Section 14301 of the Penal Code is amended to read:

14301. (a) There is hereby established in the agency, a program of financial assistance to do all of the following:

(1) Provide for statewide education and training programs in the enforcement of environmental laws for peace officers, investigators, state and local environmental regulators, and public prosecutors.

(2) Establish enhanced local environmental enforcement efforts.

(3) All funds made available to the agency for the purposes of this title shall be administered and distributed by the secretary.

(b) Not later than 12 months after the date when this title may be implemented, as specified in Section 14314, the secretary shall prepare and issue regulations, which shall, at a minimum, describe how grants are to be allocated or awarded pursuant to this title, the procedures for applying for these grants, the criteria to be used in determining which applications will be funded, and the administrative and fiscal requirements governing the receipt and expenditure of these grants.

(c) The secretary shall allocate and award funds to public agencies or private nonprofit organizations for purposes of supporting statewide environmental enforcement education and training programs for peace officers, investigators, state and local environmental regulators, and public prosecutors pursuant to Chapter 2 (commencing with Section 14304) and Chapter 3 (commencing with Section 14306), which meet the criteria established pursuant to those chapters. To ensure that these programs are coordinated with existing peace officer training, the commission shall be consulted prior to the allocation of funds to peace officer education and training programs.

(d) The secretary shall allocate and award funds to support the Environmental Circuit Prosecutor Project pursuant to Chapter 4 (commencing with Section 14309) for the purpose of improving enforcement of environmental laws by enhancing the investigation and prosecution of violations of those laws.

SEC. 5. Section 14303 of the Penal Code is amended to read:

14303. (a) There is hereby created, in the General Fund, the Environmental Enforcement and Training Account and up to two million dollars ($2,000,000) in the account may be expended annually by the agency, upon appropriation by the Legislature, for the purposes of this title.

(b) The agency may accept and receive any contribution of funds from a public or private organization or an individual, including the proceeds from a judgment in state or federal court, when the funds are contributed or the judgment specifies that the proceeds are to be used to carry out the purposes of this title. Private contributors shall not have the authority to further influence or direct the use of their contributions.

(c) The agency shall immediately deposit any funds contributed pursuant to subdivision (b) in the account.

(d) As of January 1, 2003, all unallocated funds in the Hazardous Materials Enforcement and Training Account created pursuant to Chapter 743 of the Statutes of 1992 that derive from court judgments specifying that the funds may be used only for purposes of this title shall be transferred to the Environmental Enforcement and Training Account.

SEC. 6. The heading of Chapter 2 (commencing with Section 14304) of Title 13 of Part 4 of the Penal Code is amended to read:

CHAPTER 2. PEACE OFFICER ENVIRONMENTAL ENFORCEMENT TRAINING

SEC. 7. Section 14304 of the Penal Code is amended to read:

14304. (a) The commission shall develop or review and certify, not later than 12 months after the date when this title may be implemented, as specified in Section 14314, a course or courses of instruction for training local and state peace officers in the detection of violations, and in the apprehension of suspected violators, of state and local environmental laws.

(b) The course or courses of instruction shall, at a minimum, include training on all of the following:

(1) Understanding environmental laws.

(2) Detecting violations of environmental laws.

(3) Knowing steps to take when violations are discovered in order to protect public health and facilitate prosecution of violators.

SEC. 8. The heading of Chapter 3 (commencing with Section 14306) of Title 13 of Part 4 of the Penal Code is amended to read:

CHAPTER 3. ENVIRONMENTAL TRAINING AND ENFORCEMENT

SEC. 9. Section 14306 of the Penal Code is amended to read:

14306. (a) The secretary shall provide funding to the California District Attorneys' Association to develop and implement, not later than 12 months after the receipt of funds, a course or courses of instruction for the training of public prosecutors in the enforcement of state and local environmental laws.

(b) The course or courses of instruction shall, at a minimum, do all of the following:

(1) Provide an understanding of the requirements of environmental laws.

(2) Teach prosecution techniques that will facilitate prosecution of environmental law violations.

(3) Provide environmental enforcement training materials.

SEC. 10. Section 14307 of the Penal Code is amended to read:

14307. (a) The secretary shall provide funding to the California District Attorneys' Association to develop and implement, not later than 12 months after the receipt of funds, a course or courses of instruction for the training of investigators from the offices of public prosecutors, fire departments, and state and local environmental regulators.

(b) With the concurrence of the commission, peace officers may participate in the course or courses of training.

(c) The course or courses of instruction shall, at a minimum, do all of the following:

(1) Provide an understanding of the requirements of environmental laws.

(2) Teach enforcement investigative techniques that will facilitate the prosecution of environmental law violations.

(3) Provide environmental enforcement training materials.

SEC. 11. Section 14308 is added to Chapter 3 of Title 13 of Part 4 of the Penal Code, to read:

14308. (a) The secretary may award grants to public and private entities for training public prosecutors, peace officers, firefighters, and state or local environmental regulators in the investigation and enforcement of environmental laws.

(b) The secretary may award local assistance grants to local environmental regulators for the enforcement of environmental laws.

SEC. 12. Chapter 4 (commencing with Section 14308) of Title 13 of Part 4 of the Penal Code is repealed.

SEC. 13. Chapter 4 (commencing with Section 14309) is added to Title 13 of Part 4 of the Penal Code, to read:

CHAPTER 4. ENVIRONMENTAL CIRCUIT PROSECUTOR PROJECT

14309. (a) The Environmental Circuit Prosecutor Project, a cooperative project of the California Environmental Protection Agency and the California District Attorneys Association, is hereby established.

(b) The Environmental Circuit Prosecutor Project shall have the following purposes:

(1) Discourage the commission of violations of environmental laws by demonstrating the effective response of the criminal justice system to these violations, including, but not limited to, assisting district attorneys, particularly in rural counties, in the prosecution of criminal violations of environmental laws and regulations, where a district attorney has requested assistance.

(2) Establish model environmental crime prevention, enforcement, and prosecution techniques with statewide application for fair, uniform, and effective application.

(3) Increase the awareness and effectiveness of efforts to enforce environmental laws and to better integrate environmental prosecution into California's established criminal justice system by providing on the job education and training to local peace officers and prosecutors and to local and state environmental regulators.

(4) Promote, through uniform and effective prosecution and local assistance, the effective enforcement of environmental laws and regulations.

(c) (1) The secretary shall award project grants and administer funding from the account to the California District Attorneys Association for the purpose of providing for the day-to-day operations of the project.

(2) The award may only be used to fund the costs of prosecutors, investigators, and research attorney staff, including salary, benefits, and expenses.

(3) Circuit prosecutor project employees may be either employees of the California District Attorneys Association or employees on loan from local, state, or federal governmental agencies.

(d) (1) A district attorney may request the assistance of a circuit prosecutor from the Environmental Circuit Prosecutor Project for any of the following purposes:

(A) Assistance with the investigation and development of environmental cases.

(B) Consultation concerning whether an environmental case merits filing.

(C) Litigation support, including, but not limited to, the actual prosecution of the case. A district attorney shall, as appropriate, deputize a circuit prosecutor to prosecute cases within his or her jurisdiction.

(3) The authority of a deputized circuit prosecutor shall be consistent with and shall not exceed the authority of the elected district attorney or his or her deputies.

(4) Violations of city or county ordinances may be prosecuted by circuit prosecutors when there is an environmental nexus between the ordinance and a violation of state law, federal law, or both state and federal law.

(5) Participating district attorney offices shall provide matching funds or in-kind contributions equivalent to, but not less than, 20 percent of the expense of the deputized environmental circuit prosecutor.

SEC. 14. Chapter 5 (commencing with Section 14309) of Title 13 of Part 4 of the Penal Code is repealed.

SEC. 15. Chapter 6 (commencing with Section 14314) of Title 13 of Part 4 of the Penal Code is amended and renumbered to read:

CHAPTER 5. IMPLEMENTATION AND FUNDING PRIORITIES

SEC. 16. Section 14314 of the Penal Code is amended to read:

14314. Notwithstanding any other provision of this title, the agency shall not implement this title until there is an amount of one hundred thousand dollars ($100,000) in the account.

Funds in the account shall be divided as follows:

(a) Twenty-five percent or one hundred thousand dollars ($100,000) to the commission, whichever is less.

(b) Twenty-five percent to the secretary for allocation to the Environmental Circuit Prosecutor Project pursuant to Chapter 4 (commencing with Section 14309).

(c) Twenty-five percent to the secretary for allocation to the California District Attorneys Association for training and assistance pursuant to Chapter 3 (commencing with Section 14306).

(d) (1) The balance to the secretary for grants awarded to programs pursuant to Chapter 3 (commencing with Section 14306) or Chapter 4 (commencing with Section 14309) based on need or in order to sustain the current level of presence and enforcement for those programs.

(2) Notwithstanding paragraph (1), the commission may also seek additional funding from the money allocated in this subdivision based on need if the environmental law enforcement training is mandated or if there are substantial changes in the law that require the commission to revise its environmental law courses.

(e) The secretary shall develop an application process for awarding funds to programs pursuant to subdivisions (b), (c), and (d).

SEC. 17. Section 14315 of the Penal Code is amended to read:

14315. Not later than 36 months after the date when this title may be implemented, as specified in Section 14314, the secretary shall submit a report to the Governor and the Legislature describing the operation and accomplishments of the training programs and the environmental enforcement and prosecution projects funded by this title. The commission shall prepare the section of the report pertaining to the course of instruction authorized in Section 14304 and submit it to the secretary for inclusion in the report.

SEC. 18. This act represents the result of meetings among state agencies and stakeholders to craft a long-term solution for support of the Environmental Circuit Prosecutor Project, in accord with the Governor's directive regarding Assembly Bill 960 of the 2001–02 Regular Session.

CHAPTER 1001

An act to amend Sections 40221.5, 44011, 44014.2, 44014.5, 44015, 44081, and 44091.1 of, and to add Section 44003.5 to, the Health and Safety Code, relating to air pollution, and making an appropriation therefor.

[Approved by Governor September 27, 2002. Filed with Secretary of State September 27, 2002.]

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

SECTION 1. Section 40221.5 of the Health and Safety Code is amended to read:

40221.5. (a) The members of the bay district board shall be appointed as follows:

(1) For a county entitled to appoint one member of the bay district board, the board of supervisors shall appoint either a member of the board of supervisors or a person from a list submitted to the board of supervisors by the city selection committee of that county.

(2) For a county entitled to appoint two members of the bay district board, the city selection committee of that county shall appoint one member and the board of supervisors shall appoint the other member, which member may either be a member of the board of supervisors or a person on the list submitted to the board of supervisors by the city selection committee.

(3) For a county entitled to appoint three members of the bay district board, two members shall be appointed as provided in paragraph (2) and the third member shall be appointed by the board of supervisors and shall

either be a member of the board of supervisors or a person on the list submitted to the board of supervisors by the city selection committee of that county.

(4) For a county entitled to appoint four members of the bay district board, the city selection committee of that county shall appoint two members and the board of supervisors shall appoint the other two members, either one or both of whom may be members of the board of supervisors or persons on the list submitted to the board of supervisors by the city selection committee.

(b) Any member of the bay district board appointed, and any person named on the list submitted to the board of supervisors by the city selection committee, shall be either a mayor or a city councilperson of a city in that portion of the county included within the district. The member appointed by a city selection committee pursuant to paragraph (3) of subdivision (a) or Section 40212 may designate a deputy to act on his or her behalf on the bay district board or any of its committees. The board member shall be responsible for the acts of the deputy acting in his or her official capacity on the bay district board or any of its committees under this designation.

SEC. 2. Section 44003.5 is added to the Health and Safety Code, to read:

44003.5. (a) Notwithstanding any other provision of law, an enhanced motor vehicle inspection and maintenance program, including the provisions of the test-only program described in Section 44010.5, is established in the San Francisco Bay Area Basin, consistent with the requirements described in subdivision (b).

(b) The department shall commence operation of the enhanced motor vehicle inspection and maintenance program in the urbanized areas of the San Francisco Bay Area Basin, including directing motor vehicles to test-only facilities, after the department determines that an adequate number of test-only stations, test and repair stations, referee services, and other facilities and equipment necessary to provide reliable and convenient service to vehicle owners subject to the program exist in that basin.

(c) Upon commencing operation of the enhanced program in those areas of the San Francisco Bay Area Basin subject to the requirements of the program, the bureau shall utilize emission standards for oxides of nitrogen, and percentages of vehicles directed to test-only stations similar to those utilized to begin the initial implementation of the program in other enhanced areas of the state. The department shall phase-in more stringent emission standards for oxides of nitrogen and direct higher percentages of vehicles to test-only stations, so that the fully implemented enhanced program in the San Francisco Bay area is

consistent with the fully implemented enhanced program in other areas of the state.

(d) (1) On or before January 1, 2004, and concurrent with implementing subdivision (b), the board shall submit for peer review the study produced by the University of California at Riverside and commissioned by the Bay Area Air Quality Management District, and any other available scientifically credible evidence, to determine the impact of the enhanced motor vehicle inspection and maintenance program on Contra Costa County and surrounding areas. If the peer review concludes that the enhanced motor vehicle inspection and maintenance program in the urbanized areas of the San Francisco Bay Area Basin results in adverse ozone and other air quality impacts in Contra Costa County or parts of Solano, San Joaquin, Alameda, and Santa Clara Counties, the board, on or before January 1, 2004, shall suggest mitigation measures to the Legislature and to the respective air quality districts. These measures may include, but need not be limited to, a recommendation for additional funds to be made available for transit purposes and private passenger motor vehicle maintenance and repair purposes.

(2) It is the intent of the Legislature in enacting this section to seek implementation of those mitigation measures suggested under paragraph (1) that are found to be scientifically credible means to mitigate adverse ozone and other air quality impacts, are consistent with this section, and do not adversely impact downwind regions.

(e) Consistent with subdivision (b), it is the intent of the Legislature that the department commence operation of the enhanced motor vehicle inspection and maintenance program in the urbanized areas of the San Francisco Bay Air Basin as expeditiously as possible in order to assist the San Francisco Bay Area and downwind air districts in meeting their federal air quality attainment requirements.

SEC. 3. Section 44011 of the Health and Safety Code is amended to read:

44011. (a) All motor vehicles powered by internal combustion engines that are registered within an area designated for program coverage shall be required biennially to obtain a certificate of compliance or noncompliance, except for all of the following:

(1) Every motorcycle, and every diesel-powered vehicle, until the department, pursuant to Section 44012, implements test procedures applicable to motorcycles or to diesel-powered vehicles, or both.

(2) Any motor vehicle that has been issued a certificate of compliance or noncompliance or a repair cost waiver upon a change of ownership or initial registration in this state during the preceding six months.

(3) (A) Prior to January 1, 2003, any motor vehicle manufactured prior to the 1974 model-year.

(B) Beginning January 1, 2003, any motor vehicle that is 30 or more model-years old.

(4) (A) Any motor vehicle four or less model-years old.

(B) Beginning January 1, 2004, any motor vehicle up to six model-years old, unless the state board finds that providing an exception for these vehicles will prohibit the state from meeting the requirements of Section 176(c) of the Clean Air Act (42 U.S.C. Sec. 7401 et seq.) or the state's commitments with respect to the state implementation plan required by the Clean Air Act.

(C) Any motor vehicle excepted by this paragraph shall be subject to testing and to certification requirements as determined by the department, if any of the following apply:

(i) The department determines through remote sensing activities or other means that there is a substantial probability that the vehicle has a tampered emission control system or would fail for other cause a smog check test as specified in Section 44012.

(ii) The vehicle was previously registered outside this state and is undergoing initial registration in this state.

(iii) The vehicle is being registered as a specially constructed vehicle.

(iv) The vehicle has been selected for testing pursuant to Section 44014.7 or any other provision of this chapter authorizing out-of-cycle testing.

(5) In addition to the vehicles exempted pursuant to paragraph (4), any motor vehicle or class of motor vehicles exempted pursuant to subdivision (b) of Section 44024.5. It is the intent of the Legislature that the department, pursuant to the authority granted by this paragraph, exempt at least 15 percent of the lowest emitting motor vehicles from the biennial smog check inspection.

(6) Any motor vehicle that the department determines would present prohibitive inspection or repair problems.

(7) Any vehicle registered to the owner of a fleet licensed pursuant to Section 44020 if the vehicle is garaged exclusively outside the area included in program coverage, and is not primarily operated inside the area included in program coverage.

(b) Vehicles designated for program coverage in enhanced areas shall be required to obtain inspections from appropriate smog check stations operating in enhanced areas.

SEC. 4. Section 44014.2 of the Health and Safety Code is amended to read:

44014.2. (a) The department shall develop a program for the voluntary certification of licensed smog check stations, or the department may accept a smog check station certification program proposed by accredited industry representatives. The certification program, which may be called a ''gold shield'' program, shall be for the

purpose of providing consumers, whose vehicles fail an emissions test at a test-only facility, an option of services at a single location to prevent the necessity for additional trips back to the test-only facility for vehicle certification.

(b) As soon as is practicable, but not later than January 1, 2004, the department shall adopt regulations that apply to all enhanced areas of the state, including those areas subject to the enhanced program pursuant to Section 44003.5, that permit both of the following:

(1) Any vehicle that fails a required smog test at a test-only facility may be repaired, retested, and certified at a facility licensed pursuant to Section 44014, and certified pursuant to subdivision (a).

(2) Any vehicle that is identified as a gross polluter may be repaired, retested, and certified at a facility licensed pursuant to Section 44014, and certified pursuant to subdivision (a).

SEC. 5. Section 44014.5 of the Health and Safety Code is amended to read:

44014.5. (a) The enhanced program shall provide for the testing and retesting of vehicles in accordance with Sections 44010.5 and 44014.2 and this section.

(b) The repair of vehicles at test-only facilities shall be prohibited, except that the minor repair of components damaged by station personnel during inspection at the station, any minor repair that is necessary for the safe operation of a vehicle while at a station, or other minor repairs, such as the reconnection of hoses or vacuum lines, may be undertaken at no charge to the vehicle owner or operator if authorized in advance in writing by the department.

(c) The department shall provide for the distribution to consumers by test-only facilities of a list, compiled by region, of smog check stations licensed to make repairs of vehicular emission control systems. A test-only facility may not refer a vehicle owner to any particular provider of vehicle repair services.

(d) The department shall establish standards for training, equipment, performance, or data collection for test-only facilities.

(e) The department shall prohibit test-only facilities from engaging in other business activities that represent a conflict of interest, as determined by the department.

(f) The test-only facility may charge a fee, established by the department, sufficient to cover the facility's cost to perform the tests or services, including, but not limited to, referee services and the issuance of waivers and hardship extensions required by this chapter. In addition, the station shall charge and collect the certificate fee established pursuant to Section 44060. This subdivision shall apply only to facilities contracted for pursuant to subdivision (e) of Section 44010.5.

(g) The department shall ensure that there is a sufficient number of test-only facilities to provide convenient testing for the following vehicles:

(1) All vehicles identified and confirmed as gross polluters pursuant to Section 44081 and Section 27156 of the Vehicle Code.

(2) (A) Vehicles initially identified as gross polluters by a smog check station licensed as a test-and-repair station may be issued a certificate of compliance by a test-only facility or by a licensed smog check station certified pursuant to Section 44014.2.

(B) For purposes of this section, the department shall implement a program that allows vehicles initially identified as gross polluters to be repaired and issued a certificate of compliance by a facility licensed and certified pursuant to Section 44014.2.

(3) All vehicles designated by the department pursuant to Sections 44014.7 and 44020.

(4) Vehicles issued an economic hardship extension in the previous biennial inspection of the vehicle.

(h) The department shall provide a sufficient number of test-only facilities authorized to perform referee functions to provide convenient testing for those vehicles that are required to report to, and receive a certificate of compliance from, a test-only facility by this chapter, including all of the following:

(1) All vehicles seeking to utilize state-operated financial assistance or inclusion in authorized scrap programs.

(2) All vehicles unable to obtain a certificate of compliance from a licensed smog check station pursuant to subdivision (c) of Section 44015.

(3) Any other vehicles that may be designated by the department.

(i) Gross polluters shall be referred to a test-only facility, or a test-and-repair station that is both licensed and certified pursuant to Sections 44014 and 44014.2, for a postrepair inspection and retest pursuant to subdivision (g). Simply passing the emissions test shall not be a sufficient condition for receiving a certificate of compliance. A certificate of compliance shall only be issued to a vehicle that does not have any defects with its emission control system or any defects that could lead to damage of its emission control system, as provided in regulations adopted by the department.

SEC. 6. Section 44015 of the Health and Safety Code is amended to read:

44015. (a) A licensed smog check station shall not issue a certificate of compliance, except as authorized by this chapter, to any vehicle that meets the following criteria:

(1) A vehicle that has been tampered with.

(2) A vehicle that, prior to repairs, has been initially identified by the smog check station as a gross polluter. Certification of a gross polluting vehicle shall be conducted by a designated test-only facility, or a test-and-repair station that is both licensed and certified pursuant to Sections 44014 and 44014.2.

(3) A vehicle described in subdivision (c).

(b) If a vehicle meets the requirements of Section 44012, a smog check station licensed to issue certificates shall issue a certificate of compliance or a certificate of noncompliance.

(c) (1) A repair cost waiver shall be issued, upon request of the vehicle owner, by an entity authorized to perform referee functions for a vehicle that has been properly tested but does not meet the applicable emission standards when it is determined that no adjustment or repair can be made that will reduce emissions from the inspected motor vehicle without exceeding the applicable repair cost limit established under Section 44017 and that every defect specified by paragraph (2) of subdivision (a) of Section 43204, and by paragraphs (2) and (3) of subdivision (a) of Section 43205, has been corrected. A repair cost waiver issued pursuant to this paragraph shall be accepted in lieu of a certificate of compliance for the purposes of compliance with Section 4000.3 of the Vehicle Code. No repair cost waiver shall exceed two years' duration. No repair cost waiver shall be issued until the vehicle owner has expended an amount equal to the applicable repair cost limit specified in Section 44017.

(2) An economic hardship extension shall be issued, upon request of a qualified low-income motor vehicle owner, by an entity authorized to perform referee functions, for a motor vehicle that has been properly tested but does not meet the applicable emission standards when it is determined that no adjustment or repair can be made that will reduce emissions from the inspected motor vehicle without exceeding the applicable repair cost limit, as established pursuant to Section 44017.1, that every defect specified in paragraph (2) of subdivision (a) of Section 43204, and in paragraphs (2) and (3) of subdivision (a) of Section 43205, has been corrected, that the low-income vehicle owner would suffer an economic hardship if the extension is not issued, and that all appropriate emissions-related repairs up to the amount of the applicable repair cost limit in Section 44017.1 have been performed.

(d) No repair cost waiver or economic hardship extension shall be issued under any of the following circumstances:

(1) If a motor vehicle was issued a repair cost waiver or economic hardship extension in the previous biennial inspection of that vehicle. A repair cost waiver or economic hardship extension may be issued to a motor vehicle owner only once for a particular motor vehicle belonging to that owner. However, a repair cost waiver or economic hardship

extension may be issued for a motor vehicle that participated in a previous waiver or extension program prior to January 1, 1998, as determined by the department. For waivers or extensions issued in the program operative on or after January 1, 1998, a waiver or extension may be issued for a motor vehicle only once per owner.

(2) Upon initial registration of all of the following:

(A) A direct import motor vehicle.

(B) A motor vehicle previously registered outside this state.

(C) A dismantled motor vehicle pursuant to Section 11519 of the Vehicle Code.

(D) A motor vehicle that has had an engine change.

(E) An alternate fuel vehicle.

(F) A specially constructed vehicle.

(e) Except as provided in subdivision (f), a certificate of compliance or noncompliance shall be valid for 90 days.

(f) Except as provided in Sections 4000.1, 24007, 24007.5, and 24007.6 of the Vehicle Code, a licensed motor vehicle dealer shall be responsible for having a smog check inspection performed on, and a certificate of compliance or noncompliance issued for, every motor vehicle offered for retail sale. A certificate issued to a licensed motor vehicle dealer shall be valid for a two-year period, or until the vehicle is sold and registered to a retail buyer, whichever occurs first.

(g) A test may be made at any time within 90 days prior to the date otherwise required.

SEC. 7. Section 44081 of the Health and Safety Code is amended to read:

44081. (a) (1) The department, in cooperation with the state board, shall institute procedures for auditing the emissions of vehicles while actually being driven on the streets and highways of the state. The department may undertake those procedures itself or seek a qualified vendor of these services. The primary object of the procedures shall be the detection of gross polluters. The procedures shall consist of techniques and technologies determined to be effective for that purpose by the department, including, but not limited to, remote sensing. The procedures may include pullovers for roadside emissions testing and inspection. The department shall consider the recommendations of the review committee based on the outcome of the pilot demonstration program conducted pursuant to Section 44081.6.

(2) The department may additionally use other methods to identify gross polluting vehicles for out-of-cycle testing and repair.

(b) The department shall, by regulation, establish a program for the out-of-cycle testing and repair of motor vehicles found, through roadside auditing, to be emitting at levels that exceed specified standards. The program shall include all of the following elements:

(1) Emission standards, and test and inspection procedures and regulations, adopted in coordination with the state board, applicable to vehicles tested during roadside auditing. Emission standards for issuance of a notice of noncompliance to a gross polluter shall be designed to maximize the identification of vehicles with substantial excess emissions.

(2) Procedures for issuing notices of noncompliance to owners of gross polluters, either at the time of the roadside audit, or subsequently by certified mail, or by obtaining a certificate of mailing as evidence of service, using technologies for recording license plate numbers. The notice of noncompliance shall provide that, unless the vehicle is brought to a designated test-only facility or a test-and-repair station that is both licensed and certified pursuant to Sections 44014 and 44014.2, for emissions testing within 30 days, the owner is required to pay an administrative fee of five hundred dollars ($500) to be collected by the Department of Motor Vehicles at the next annual registration renewal or the next change of ownership of the vehicle, whichever occurs first. Commencing on the 31st day after issuance of the notice of noncompliance, the fee shall accrue at the rate of five dollars ($5) per day up to the five hundred dollars ($500) maximum.

(3) Procedures for the testing of vehicles identified as gross polluters by a designated test-only facility, or a test-and-repair station that is both licensed and certified pursuant to Sections 44014 and 44014.2, to confirm that the vehicle exceeds the minimum emission standard for gross polluters set by the department.

(4) Procedures requiring owners of vehicles confirmed as gross polluters to have the vehicle repaired, resubmitted for testing, and obtain a certificate of compliance from a designated test-only facility, or a test-and-repair station that is both licensed and certified pursuant to Sections 44014 and 44014.2, or removed from service as attested by a certificate of nonoperation from the Department of Motor Vehicles within 30 days or be required to pay an administrative fee of not more than five hundred dollars ($500), to be collected by the Department of Motor Vehicles at the next annual registration renewal or the next change of ownership, whichever occurs first. Commencing on the 31st day after issuance of the notice of noncompliance, the fee shall accrue at the rate of five dollars ($5) per day up to the five hundred dollar ($500) maximum. The registration of a vehicle shall not be issued or renewed if that vehicle has been identified as a gross polluter and has not been issued a certificate of compliance. Except as provided in subdivision (b) of Section 9250.18 of the Vehicle Code, any revenues collected by the Department of Motor Vehicles pursuant to this subdivision and Section 9250.18 of the Vehicle Code shall be deposited in the Vehicle Inspection and Repair Fund. If the ownership of the vehicle is transferred, the

administrative fee provided for in this subdivision shall be waived if the vehicle is brought into compliance.

(5) A procedure for notifying the Department of Motor Vehicles of notices of noncompliance issued, so that the Department of Motor Vehicles may provide effective collection of the administrative fee. The Department of Motor Vehicles shall cooperate with, and implement the requirements of, the department in that regard.

(c) The department may adopt any other regulations necessary for the effective implementation of this section, as determined by the department.

(d) Upon the request of the department, the Department of the California Highway Patrol shall provide assistance in conducting roadside auditing, to consist of (1) the stopping of vehicles and traffic management, and (2) the issuance of notices of noncompliance to gross polluters. The department shall reimburse the Department of the California Highway Patrol for its costs of providing those services. The Department of Transportation and affected local agencies shall provide necessary assistance and cooperation to the department in the operation of the program.

(e) There shall be no repair cost limit imposed pursuant to Section 44017 for any repairs that are required to be made under the roadside auditing program, except as provided in Section 44017.

(f) This section does not apply to vehicles operating under a valid repair cost waiver or economic hardship extension issued pursuant to Section 44015.

SEC. 8. Section 44091.1 of the Health and Safety Code is amended to read:

44091.1. On or after July 1, 1998, in the event that the smog impact fee imposed pursuant to Section 6262 of the Revenue and Taxation Code is ruled unconstitutional by an appellate court or the California Supreme Court, or if the state is in any manner prevented by either of these courts from imposing or collecting the fee, all of the following actions shall immediately take place:

(a) The fee specified in paragraph (1) of subdivision (d) of Section 44060 shall be six dollars ($6). The revenues from that fee shall be allocated as follows:

(1) Except as provided for in paragraph (2), the revenue generated by two dollars ($2) of the fee shall be deposited in the account created by Section 44091, while the revenue generated by the remaining four dollars ($4) shall continue to be deposited in the Vehicle Inspection and Repair Fund.

(2) All revenue generated by the fee imposed at first registration of a motor vehicle exempted under paragraph (4) of subdivision (a) of

Section 44011 shall be deposited in the account created by Section 44091.

(b) This section shall remain in effect only until January 1, 2010, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2010, deletes or extends that date.

SEC. 9. This act is intended to resolve the issues currently being litigated in both of the following cases:

(a) San Joaquin Valley Unified Air Pollution Control District, Sacramento Metropolitan Air Quality Management District v. California Air Resources Board (Sacramento County Superior Court, Civ. No. 02CS00362).

(b) Northern Sierra Air Quality Management District v. California Air Resources Board (Sacramento County Superior Court, Civ. No. 02CS00739).

SEC. 10. This act shall only become operative if all of the following conditions are met:

(a) The petitioners in Sacramento Metropolitan Air Quality Management District, and Yolo Solano Air Quality Management District v. the United States Environmental Protection Agency, in the United States Court of Appeals for the Ninth Circuit (Petition Number 02-70848), move to withdraw from the lawsuit, with prejudice, on or before October 4, 2002.

(b) The court issues an order granting the motion described in subdivision (a).

(c) The petitioners file a certified copy of that order with the Secretary of State.

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.

SEC. 12. The sum of five million dollars ($5,000,000) is hereby appropriated from the Vehicle Inspection and Repair Fund to the Department of Consumer Affairs for distribution to the Bureau of Automotive Repair to cover the costs associated with the implementation of the enhanced motor vehicle inspection and maintenance program in the San Francisco Bay Area Basin required by Section 44003.5 of the Health and Safety Code. That sum shall be allocated from those moneys in the Vehicle Inspection and Repair Fund derived from the imposition of regulatory fees pursuant to Section 44060 of the Health and Safety Code, and may not include moneys in the

Vehicle Inspection and Repair Fund derived from the imposition of fines pursuant to Section 44058 of the Health and Safety Code.

CHAPTER 1002

An act to add Section 49084 to, and to add Chapter 10 (commencing with Section 60900) to Part 33 of, the Education Code, relating to pupil testing, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 27, 2002. Filed with Secretary of State September 27, 2002.]

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

SECTION 1. (a) The Legislature finds and declares the following:

(1) In order to comply with the federal No Child Left Behind Act of 2001, California must have access to longitudinal pupil data to assess the long-term value of its educational investments and programs and provide a research basis for improving pupil performance.

(2) Matching a unique pupil identifier with achievement data for every pupil is necessary for accurate analyses of pupil achievement, high quality evaluations, and the ability to report progress of test subgroups over time as required by the federal No Child Left Behind Act of 2001.

(3) The collection and classification of data as set forth in this act serves a compelling state interest and is necessary to comply with federal law and maintain eligibility for federal education funding.

(b) It is therefore the intent of the Legislature to adopt a system that will provide for the assessment and evaluation of statewide pupil level data while ensuring that current assessment data is safely maintained to augment a comprehensive statewide longitudinal data system once fully implemented.

SEC. 2. Section 49084 is added to the Education Code, to read:

49084. (a) A participating local education agency with an enrollment of 3,500 or more pupils, as determined by the most current California Basic Educational Data System information that is available when the agency joins the California School Information Services Program, is eligible for one-time funding for startup costs based on the greater of the following:

(1) Eight dollars and fifty-one cents ($8.51) for each pupil who is enrolled, as determined by the most current California Basic Educational Data System information that is available when the agency joins the California School Information Services Program.

(2) Two thousand five hundred dollars ($2,500) per schoolsite under the jurisdiction of the local education agency.

(b) A participating local education agency with a pupil enrollment of fewer than 3,500 pupils and greater than 1,800 pupils, as determined by the most current California Basic Educational Data System information that is available when the agency joins the California School Information Services Program, is eligible for one-time funding for startup costs based on the greater of the following:

(1) Eight dollars and fifty-one cents ($8.51) per pupil who is enrolled, as determined by the most current California Basic Educational Data System information that is available when the agency joins the California School Information Services Program.

(2) Two thousand five hundred dollars ($2,500) per schoolsite under the jurisdiction of the local education agency.

(3) Thirty thousand dollars ($30,000).

(c) A participating local education agency with a pupil enrollment of fewer than 1,800 pupils, as determined by the most current California Basic Educational Data System information that is available when the agency joins the California School Information Services Program, is eligible for one-time funding for the startup costs based on the greater of the following:

(1) Eight dollars and fifty-one cents ($8.51) for each pupil who is enrolled, as determined by the most current California Basic Educational Data System information, and two thousand five hundred dollars ($2,500) per schoolsite.

(2) Fifteen thousand dollars ($15,000).

(d) Notwithstanding subdivisions (a), (b), and (c) the California School Information Services Program may not provide a local education agency more than 50 percent of the total funds required by an agency to achieve full participation in the California School Information Services Program. Total costs may include both actual expenditures and in-kind contributions, including those made within the previous three years, that are necessary to enable the local education agency to participate in the California School Information Services Program.

(e) For each consortium of local education agencies using the same pupil information system software, the consortium fiscal agent shall receive five thousand nine hundred seventy dollars ($5,970) for each new local education agency in the first and second year of participation in the California School Information Services Program to provide project and fiscal management services on behalf of participating consortium members after July 1, 2002.

SEC. 3. Chapter 10 (commencing with Section 60900) is added to Part 33 of the Education Code, to read:

CHAPTER 10. CALIFORNIA LONGITUDINAL PUPIL ACHIEVEMENT DATA SYSTEM

60900. (a) The State Department of Education shall contract for the development of proposals which will provide for the retention and analysis of longitudinal pupil achievement data on the tests administered pursuant to Chapter 5 (commencing with Section 60600), Chapter 7 (commencing with Section 60810), and Chapter 9 (commencing with Section 60850). The longitudinal data shall be known as the California longitudinal pupil achievement data system.

(b) The proposals developed pursuant to subdivision (a) shall evaluate and determine whether it would be most effective, from both a fiscal and a technological perspective, for the state to own the California longitudinal pupil achievement data system. The proposals shall additionally evaluate and determine the most effective means of housing the California longitudinal pupil achievement data system.

(c) The California longitudinal pupil achievement data system shall be developed and implemented in accordance with all state rules and regulations governing information technology projects.

(d) The system or systems developed pursuant to this section shall be used to accomplish all of the following goals:

(1) To provide school districts and the State Department of Education access to data necessary to comply with federal reporting requirements delineated in the No Child Left Behind Act of 2001 (P.L. 107-110).

(2) To provide a better means of evaluating educational progress and investments over time.

(3) To provide local education agencies information that can be used to improve pupil achievement.

(4) To provide an efficient, flexible, and secure means of maintaining longitudinal statewide pupil level data.

(e) In order to comply with federal law as delineated in the No Child Left Behind Act of 2001 (20 U.S.C. Sec. 6301 et seq.), the local education agency shall retain individual pupil records for each test taker, including all of the following:

(1) All demographic data collected from the STAR test, high school exit examination, and English language development test.

(2) Pupil achievement data from assessments administered pursuant to the STAR, high school exit examination, and English language development testing programs. To the extent feasible, data should include subscore data within each content area.

(3) A unique pupil identification number to be identical to the pupil identifier developed pursuant to the California School Information Services, which shall be retained by each local education agency and used to ensure the accuracy of information on the header sheets of the

STAR tests, high school exit examination, and the English language development test.

(4) All data necessary to compile reports required by the federal No Child Left Behind Act of 2001, including, but not limited to, dropout and graduation rates.

(5) Other data elements deemed necessary by the Superintendent of Public Instruction, with approval of the State Board of Education, to comply with the federal reporting requirements delineated in the No Child Left Behind Act of 2001 (P.L. 107-110), after review and comment by the advisory board convened pursuant to subdivision (h).

(f) The California longitudinal pupil achievement data system or systems shall have all of the following characteristics:

(1) The ability to sort by demographic element collected from the STAR tests, high school exit examination, and English language development test.

(2) The capability to be expanded to include pupil achievement data from multiple years.

(3) The capability to monitor pupil achievement on the STAR tests, high school exit examination, and English language development test from year to year and school to school.

(4) The capacity to provide data to the state and local education agencies upon their request.

(g) Data elements and codes included in the system shall comply with Sections 49061 to 49079, inclusive, and Sections 49602 and 56347, with Sections 430 to 438, inclusive, of Title 5 of the California Code of Regulations, with the Information Practices Act of 1977 (Chapter 1 (commencing with Section 1798) of Title 1.8 of Part 4 of Division 3 of the Civil Code), and with the Family Education Rights and Privacy Act statute (20 U.S.C. Secs. 1232g and 1232h and related federal regulations.

(h) The State Department of Education shall convene an advisory board consisting of representatives from the State Board of Education, the Secretary for Education, the Department of Finance, the State Privacy Ombudsman, the Legislative Analyst's office, representatives of parent groups, school districts, and local education agencies, and education researchers to establish privacy and access protocols, provide general guidance, and make recommendations relative to data elements. The department is encouraged to seek representation broadly reflective of the general public of California.

(i) Subject to funding being provided in the annual Budget Act, the State Department of Education shall contract with a consultant for independent project oversight. The Director of Finance shall review the request for proposals for the contract. The consultant hired to conduct the independent project oversight shall twice annually submit a written

report to the Superintendent of Public Instruction, the State Board of Education, the advisory board, the Director of Finance, the Legislative Analyst, and the appropriate policy and fiscal committees of the Legislature. The report shall include an evaluation of the extent to which the California longitudinal pupil achievement data system is meeting the goals described in subdivision (b) and recommendations to improve the data system in ensuring the privacy of individual pupil information and providing the data needed by the state and school districts.

(j) This section shall be implemented using federal funds received pursuant to the federal No Child Left Behind Act of 2001 (20 U.S.C. Sec. 6301 et seq.), which are appropriated for purposes of this section in Item 6110-113-0890 of Section 2.00 of the Budget Act of 2002. The release of these funds is contingent on approval of an expenditure plan by the Department of Finance.

(k) For purposes of this chapter, a local education agency shall include a county office of education, a school district, or charter school.

SEC. 4. Notwithstanding Provision 11 of Item 6110-113-0890 of Section 2.00 of the Budget Act of 2002 that makes available six million eight hundred eighty thousand dollars ($6,880,000) for the establishment of a longitudinal database and for data collection requirements of the federal No Child Left Behind Act of 2001 pursuant to legislation in the 2001–02 Regular Session, the State Department of Education may expend up to six million dollars ($6,000,000) of those moneys for the development and implementation of the California longitudinal pupil achievement data system pursuant to Chapter 10 (commencing with Section 60900) of Part 33 of the Education Code and may expend up to eight hundred eighty thousand dollars ($880,000) of those moneys and the portion of the six million dollars ($6,000,000) not used for the development and implementation of the California longitudinal pupil achievement data system, for purposes of collecting or reporting data necessary to meet the requirements of the federal No Child Left Behind Act of 2001.

SEC. 5. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because this act implements a federal law or regulation and results only in costs mandated by the federal government, within the meaning of Section 17556 of the Government Code.

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 comply with the federal No Child Left Behind Act of 2001 and to ensure the ongoing receipt of federal funds for education, it is necessary for this act to take effect immediately, as an urgency statute.

CHAPTER 1003

An act to amend Sections 40912, 41701, and 71114 of the Public Resources Code, relating to solid waste.

[Approved by Governor September 27, 2002. Filed with Secretary of State September 27, 2002.]

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

SECTION 1. Section 40912 of the Public Resources Code is amended to read:

40912. (a) The board shall develop a model countywide or regional siting element and a model countywide or regional agency integrated waste management plan that will establish prototypes of the content and format that counties or regional agencies may use in meeting the requirements of this part.

(b) On or before July 1, 2001, the board shall develop a model revised source reduction and recycling element that will establish prototypes of the content and format of that element that cities, counties, regional agencies, or a city and county may use in meeting the requirements of this part.

(c) The board shall adopt a program to provide assistance to cities, counties, regional agencies, or a city and county in the development and implementation of source reduction programs. The program shall include, but not be limited to, the following:

(1) The development of model source reduction programs and strategies that may be used at the local and regional level.

(2) Ongoing analysis of public and private sector source reduction programs that may be provided to cities, counties, regional agencies, and a city and county in order to assist them in complying with Article 3 (commencing with Section 41050) of Chapter 2 and Article 3 (commencing with Section 41350) of Chapter 3.

(3) Assistance to cities, counties, regional agencies, and a city and county in the development of source reduction programs for commercial and industrial generators of solid waste that include the development of source reduction strategies designed for specific types of commercial and industrial generators.

(d) The board shall, to the maximum extent feasible, utilizing existing resources, provide local jurisdictions and private businesses with information, tools, and mathematical models to assist with meeting or exceeding the 50-percent diversion requirement pursuant to Section 41780. The board shall act as a solid waste information clearinghouse.

(e) (1) On or before April 1, 2003, and using existing resources, the board shall provide local jurisdictions and private businesses with information and models to assist with consideration of environmental justice concerns when complying with Section 41701.

(2) For the purposes of this subdivision, ''environmental justice'' has the meaning defined in subdivision (e) of Section 65040.12 of the Government Code.

SEC. 2. Section 41701 of the Public Resources Code is amended to read:

41701. Each countywide siting element and revision thereto shall include, but is not limited to, all of the following:

(a) A statement of goals and policies for the environmentally safe transformation or disposal of solid waste that cannot be reduced, recycled, or composted.

(b) An estimate of the total transformation or disposal capacity in cubic yards that will be needed for a 15-year period to safely handle solid wastes generated with the county that cannot be reduced, recycled, or composted.

(c) The remaining combined capacity of existing solid waste transformation or disposal facilities existing at the time of the preparation of the siting element, or revision thereto, in cubic yards and years.

(d) The identification of an area or areas for the location of new solid waste transformation or disposal facilities, or the expansion of existing facilities, that are consistent with the applicable city or county general plan, if the county determines that existing capacity will be exhausted within 15 years or additional capacity is desired.

(e) For countywide elements submitted or revised on or after January 1, 2003, a description of the actions taken by the city or county to solicit public participation by the affected communities, including, but not limited to, minority and low-income populations.

SEC. 3. Section 71114 of the Public Resources Code is amended to read:

71114. (a) 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:

(1) Two representatives of local or regional land use planning agencies.

(2) Two representatives from air pollution control districts or air quality management districts.

(3) Two representatives from certified unified program agencies (CUPAs).

(4) Two representatives from environmental organizations.

(5) Four representatives from the business community, two from a small business and two from a large business, except that three of these representatives may be from an association that represents small or large businesses, and at least one of the small business representatives shall be from an association that represents small businesses. As used in this paragraph, ''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.

(6) Two representatives from community organizations.

(7) One representative from a federally recognized Indian tribe.

(8) Two representatives from environmental justice organizations.

(b) 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. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act, within the meaning of Section 17556 of the Government Code.

CHAPTER 1004

An act to amend Section 33459.1 of, and to repeal Sections 33459.2 and 33459.7 of, the Health and Safety Code, relating to hazardous substances.

[Approved by Governor September 27, 2002. Filed with Secretary of State September 27, 2002.]

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

SECTION 1. Section 33459.1 of the Health and Safety Code is amended to read:

33459.1. (a) (1) An agency may take any actions that the agency determines are necessary and that are consistent with other state and federal laws to remedy or remove a release of hazardous substances on, under, or from property within a project area, whether the agency owns that property or not, subject to the conditions specified in subdivision (b). Unless an administering agency has been designated under Section 25262, the agency shall request cleanup guidelines from the department or the California regional water quality control board before taking action to remedy or remove a release. The department or the California regional water quality control board shall respond to the agency's request to provide cleanup guidelines within a reasonable period of time. The agency shall thereafter submit for approval a cleanup or remedial action plan to the department or the California regional water quality control board before taking action to remedy or remove a release. The department or the California regional water quality control board shall respond to the agency's request for approval of a cleanup or remedial action plan within a reasonable period of time.

(2) The agency shall provide the department and local health and building departments, the California regional water quality control board, with notification of any cleanup activity pursuant to this section at least 30 days before the commencement of the activity. If an action taken by an agency or a responsible party to remedy or remove a release of a hazardous substance does not meet, or is not consistent with, a remedial action plan or cleanup plan approved by the department or the California regional water quality control board, the department or the California regional water quality control board that approved the cleanup or remedial action plan may require the agency to take, or cause the taking of, additional action to remedy or remove the release, as provided by applicable law. If an administering agency for the site has been designated under Section 25262, any requirement for additional action may be imposed only as provided in Sections 25263 and 25265. If methane or landfill gas is present, the agency shall obtain written approval from the California Integrated Waste Management Board prior to taking that action.

(b) Except as provided in subdivision (c), an agency may take the actions specified in subdivision (a) only under one of the following conditions:

(1) There is no responsible party for the release identified by the agency.

(2) A party determined by the agency to be a responsible party for the release has been notified by the agency or has received adequate notice from the department, a California regional water quality control board, the Environmental Protection Agency, or other governmental agency with relevant authority and has been given 60 days to respond and to

propose a remedial action plan and schedule, and the responsible party has not agreed within an additional 60 days to implement a plan and schedule to remedy or remove the release that is acceptable to the agency and that has been found by the agency to be consistent, to the maximum extent possible, with the priorities, guidelines, criteria, and regulations contained in the National Contingency Plan and published pursuant to Section 9605 of Title 42 of the United States Code for similar releases, situations, or events.

(3) The party determined by the agency to be the responsible party for the hazardous substance release entered into an agreement with the agency to prepare a remedial action plan for approval by the department, the California regional water quality control board, or the appropriate local agency and to implement the remedial action plan in accordance with an agreed schedule, but failed to prepare the remedial action plan, failed to implement the remedial action plan in accordance with the agreed schedule, or otherwise failed to carry out the remedial action in an appropriate and timely manner. Any action taken by the agency pursuant to this paragraph shall be consistent with any agreement between the agency and the responsible party and with the requirements of the state or local agency that approved or will approve the remedial action plan and is overseeing or will oversee the preparation and implementation of the remedial action plan.

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

(1) An agency taking actions to investigate or conduct feasibility studies concerning a release.

(2) An agency taking the actions specified in subdivision (a) if the agency determines that conditions require immediate action.

(d) An agency may designate a local agency in lieu of the department or the California regional water quality control board to review and approve a cleanup or remedial action plan and to oversee the remediation or removal of hazardous substances from a specific hazardous substance release site in accordance with the following conditions:

(1) The local agency may be so designated if it is designated as the administering agency under Section 25262. In that event, the local agency, as the administering agency, shall conduct the oversight of the remedial action in accordance with Chapter 6.65 (commencing with Section 25260) and all provisions of that chapter shall apply to the remedial action.

(2) The local agency may be so designated if cleanup guidelines were requested from a California regional water quality control board, and the site is an underground storage tank site subject to Chapter 6.7 (commencing with Section 25280) of Division 20, the local agency has been certified as a certified unified program agency pursuant to Section 25404.1, the State Water Resources Control Board has entered into an

agreement with the local agency for oversight of those sites pursuant to Section 25297.1, the local agency determines that the site is within the guidelines and protocols established in, and pursuant to, that agreement, and the local agency consents to the designation.

(3) A local agency may not consent to the designation by an agency unless the local agency determines that it has adequate staff resources and the requisite technical expertise and capabilities available to adequately supervise the remedial action.

(4) (A) Where a local agency has been designated pursuant to paragraph (2), the department or a California regional water quality control board may require that a local agency withdraw from the designation, after providing the agency with adequate notice, if both of the following conditions are met:

(i) The department or a California regional water quality control board determines that an agency's designation of a local agency was not consistent with paragraph (2), or makes one of the findings specified in subdivision (d) of Section 101480.

(ii) The department or a California regional water quality control board determines that it has adequate staff resources and capabilities available to adequately supervise the remedial action, and assumes that responsibility.

(B) Nothing in this paragraph prevents a California regional water quality control board from taking any action pursuant to Division 7 (commencing with Section 13000) of the Water Code.

(5) Where a local agency has been designated pursuant to paragraph (2), the local agency may, after providing the agency with adequate notice, withdraw from its designation after making one of the findings specified in subdivision (d) of Section 101480.

(e) To facilitate redevelopment planning, the agency may require the owner or operator of any site within a project area to provide the agency with all existing environmental information pertaining to the site, including the results of any Phase I or subsequent environmental assessment, as defined in Section 25200.14, any assessment conducted pursuant to an order from, or agreement with, any federal, state or local agency, and any other environmental assessment information, except that which is determined to be privileged. The person requested to furnish the information shall be required only to furnish that information as may be within their possession or control, including actual knowledge of information within the possession or control of any other party. If environmental assessment information is not available, the agency may require the owner of the property to conduct an assessment in accordance with standard real estate practices for conducting phase I or phase II environmental assessments.

SEC. 2. Section 33459.2 of the Health and Safety Code is repealed.

SEC. 3. Section 33459.7 of the Health and Safety Code is repealed.

CHAPTER 1005

An act to add Article 4 (commencing with Section 110423) to Chapter 4 of Part 5 of Division 104 of the Health and Safety Code, relating to public health.

[Approved by Governor September 27, 2002. Filed with Secretary of State September 27, 2002.]

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

SECTION 1. Article 4 (commencing with Section 110423) is added to Chapter 4 of Part 5 of Division 104 of the Health and Safety Code, to read:

Article 4. Dietary Supplements

110423. (a) (1) The sale or distribution of any dietary supplement product containing ephedrine group alkaloids is prohibited unless the product label clearly and conspicuously contains the following statement:

''THIS PRODUCT HAS (INSERT THE AMOUNT OF PRODUCT) MILLIGRAMS OF CONCENTRATED EPHEDRINE GROUP ALKALOIDS PER SERVING IN THE FORM OF HERBAL EXTRACTS.''

(2) The sale or distribution of any dietary supplement product containing ephedrine group alkaloids is prohibited unless the product label clearly and conspicuously contains the following warning:

(A) ''WARNING: NOT FOR USE BY INDIVIDUALS UNDER THE AGE OF 18 YEARS. DO NOT USE IF PREGNANT OR NURSING. Consult a physician or licensed qualified health care professional before using this product if you have, or have a family history of, heart disease, thyroid disease, diabetes, high blood pressure, depression or other psychiatric condition, glaucoma, difficulty in urinating, prostate enlargement, or seizure disorder, or if you are using a monoamine oxidase inhibitor (MAOI) or any other dietary supplement, prescription drug, or over-the-counter drug containing ephedrine, pseudoephedrine, or phenylpropanolamine (ingredients

found in certain allergy, asthma, cough or cold, and weight control products).''

(B) ''Do not exceed recommended serving. Exceeding recommended serving may cause serious adverse health effects, including heart attack and stroke.''

(C) ''Discontinue use and call a physician or licensed qualified health care professional immediately if you experience rapid heartbeat, dizziness, severe headache, shortness of breath, or other similar symptoms.''

(D) ''Individuals who are sensitive to the effects of caffeine should consult a licensed health care professional before consuming this product.''

(E) ''KEEP OUT OF REACH OF CHILDREN.''

(b) The sale or distribution of dietary supplements containing steroid hormone precursors is prohibited unless the product label for these dietary supplements clearly and conspicuously contains the following warning:

''WARNING: NOT FOR USE BY INDIVIDUALS UNDER THE AGE OF 18 YEARS. DO NOT USE IF PREGNANT OR NURSING. Consult a physician or licensed qualified health care professional before using this product if you have, or have a family history of, prostate cancer, prostate enlargement, heart disease, low ''good'' cholesterol (HDL), or if you are using any other dietary supplement, prescription drug, or over-the-counter drug. Do not exceed recommended serving. Exceeding recommended serving may cause serious adverse health effects. Possible side effects include acne, hair loss, hair growth on the face (in women), aggressiveness, irritability, and increased levels of estrogen. Discontinue use and call a physician or licensed qualified health care professional immediately if you experience rapid heartbeat, dizziness, blurred vision, or other similar symptoms. KEEP OUT OF REACH OF CHILDREN.''

(c) The product label for any dietary supplement product containing ephedrine group alkaloids or steroid hormone precursors shall clearly and conspicuously display the following statement: ''To report any adverse events call 1-800-332-1088.''

110423.2. (a) It is a misdemeanor for any manufacturer, wholesaler, retailer, or other person, to sell, transfer, or otherwise furnish a dietary supplement containing ephedrine group alkaloids or steroid hormone precursors to a person under 18 years of age.

(b) A seller shall request valid identification from any individual who attempts to purchase a dietary supplement containing ephedrine group

alkaloids or steroid hormone precursors if that individual reasonably appears to the seller to be under 18 years of age.

(c) Notwithstanding subdivisions (a) and (b), a retail clerk who fails to request identification pursuant to subdivision (b) shall not be guilty of a misdemeanor pursuant to subdivision (a), subject to any civil penalties, or subject to any disciplinary action or discharge by his or her employer. This subdivision shall not apply to a retail clerk who is a willful participant in an ongoing criminal conspiracy to violate this article.

110423.4. (a) This article shall not apply to a licensed health care practitioner practicing within his or her scope of practice who prescribes, dispenses, or both, herbs in the course of treatment of patients under the care of the licensed practitioner.

(b) This article shall not apply to herbal products that are sold or distributed directly to a licensed health care practitioner when the herbal product is used solely for the purpose of the treatment of patients under the care of the practitioner.

110423.6. (a) Except as provided in subdivision (b), a retail establishment that sells, transfers, or otherwise furnishes a dietary supplement product in violation of Section 110423.2 shall not be guilty of a misdemeanor pursuant to subdivision (a) of Section 110423.2 if all of the following conditions are met:

(1) Every checkout clerk at the retail establishment has completed standardized training that includes, but is not limited to, the law with respect to selling dietary supplement products subject to this article, methods of easily identifying dietary supplement products subject to this article when checking out customers, and procedures for requesting identification from any customer attempting to purchase dietary supplement products subject to this article who reasonably appears to the clerk to be a minor.

(2) Every checkout clerk at the retail establishment is provided with training updates that cover any changes in the law with respect to selling dietary supplement products subject to this article and any other responsibilities of the retail establishment under this article.

(3) Every programmable checkout scanner or computer used to check out customers with purchases is programmed to identify dietary supplement products subject to this article at the checkout station. A retail establishment that does not use programmable checkout scanners or computers is not required to satisfy this condition.

(4) Every checkout clerk has received a written list of dietary supplement products subject to this article that are sold by the retail establishment that may be posted at the checkout station for easy access.

(b) Notwithstanding the fact that a retail establishment has met all of the conditions specified in subdivision (a), the retail establishment shall

be guilty of a misdemeanor pursuant to subdivision (a) of Section 110423.2 if the retail establishment violates this article three or more times in a 12-month period.

110423.8. Nothing in this article limits or restricts any rights, remedies, or duties otherwise applicable by law.

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

SEC. 3. 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.

CHAPTER 1006

An act to add Article 4 (commencing with Section 110422) to Chapter 4 of Part 5 of Division 104 of the Health and Safety Code, relating to food.

[Approved by Governor September 27, 2002. Filed with Secretary of State September 27, 2002.]

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

SECTION 1. Article 4 (commencing with Section 110422) is added to Chapter 4 of Part 5 of Division 104 of the Health and Safety Code, to read:

Article 4. Dietary Supplement Labeling and Advertising

110422. (a) Whenever a warning label is included on any product defined as a dietary supplement pursuant to Section 321(ff) of Title 21 of the United States Code, that is manufactured or distributed in this state, the label shall be clear and conspicuous.

(b) Nothing in this section shall in any way limit or restrict any rights, remedies, or duties otherwise applicable by law.

(c) This section shall be implemented to the extent permitted by federal law.

110424. Violation of this article by any person, as defined in Section 109995, shall constitute an infraction, punishable by a fine not to exceed the following:

(a) One thousand dollars ($1,000) for the first violation.

(b) Two thousand dollars ($2,000) for the second violation.

(c) Five thousand dollars ($5,000) for the third and each subsequent violation.

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

CHAPTER 1007

An act to amend Sections 900.2, 912.4, 912.8, 913, 915, 935.6, 940.2, 946.6, 948, 955.4, 965, 965.2, 965.6, and 965.65 of, and to add Sections 900.3, 912.7, 935.8, 940.3, 948.1, and 955.9 to, the Government Code, relating to public entity liability.

[Approved by Governor September 27, 2002. Filed with Secretary of State September 27, 2002.]

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

SECTION 1. Section 900.2 of the Government Code is amended to read:

900.2. ''Board'' means:

(a) In the case of a local public entity, the governing body of the local public entity.

(b) In the case of the state, except as provided by subdivision (c), the Victim Compensation and Government Claims Board.

(c) In the case of a judicial branch entity or judge of one of those entities, the Judicial Council.

SEC. 2. Section 900.3 is added to the Government Code, to read:

900.3. A ''judicial branch entity'' is a public entity and means any superior court, court of appeals, the Supreme Court, the Judicial Council, or the Administrative Office of the Courts.

SEC. 3. Section 912.4 of the Government Code is amended to read:

912.4. (a) The board shall act on a claim in the manner provided in Section 912.6, 912.7, or 912.8 within 45 days after the claim has been presented. If a claim is amended, the board shall act on the amended claim within 45 days after the amended claim is presented.

(b) The claimant and the board may extend the period within which the board is required to act on the claim by written agreement made either:

(1) Before the expiration of the period.

(2) After the expiration of the period if an action based on the claim has not been commenced and is not yet barred by the period of limitations provided in Section 945.6.

(c) If the board fails or refuses to act on a claim within the time prescribed by this section, the claim shall be deemed to have been rejected by the board on the last day of the period within which the board was required to act upon the claim. If the period within which the board is required to act is extended by agreement pursuant to this section, the last day of the period within which the board is required to act shall be the last day of the period specified in the agreement.

SEC. 4. Section 912.7 is added to the Government Code, to read:

912.7. The Judicial Council shall act on a claim against a judicial branch entity or judge of one of those entities in accordance with the procedure that the Judicial Council provides by rule of court. The Judicial Council may authorize any committee of the Judicial Council or employee of the Administrative Office of the Courts to perform the functions of the Judicial Council under this part.

SEC. 5. Section 912.8 of the Government Code is amended to read:

912.8. (a) Except as provided in Section 912.7, in the case of claims against the state, the board shall act on claims in accordance with that procedure as the board, by rule, may prescribe. It may hear evidence for and against the claims and, with the approval of the Governor, report to the Legislature those facts and recommendations concerning the claims as it deems proper. In making recommendations, the board may state and use any official or personal knowledge which any member may have regarding any claim. The board may authorize any employee of the state to perform the functions of the board under this part as are prescribed by the board.

SEC. 6. Section 913 of the Government Code is amended to read:

913. (a) Written notice of the action taken under Section 912.6, 912.7, or 912.8 or the inaction which is deemed rejection under Section 912.4 shall be given in the manner prescribed by Section 915.4. The notice may be in substantially the following form:

''Notice is hereby given that the claim which you presented to the (insert title of board or officer) on (indicate date) was (indicate whether rejected, allowed, allowed in the amount of $____ and rejected as to the

balance, rejected by operation of law, or other appropriate language, whichever is applicable) on (indicate date of action or rejection by operation of law).''

(b) If the claim is rejected in whole or in part, the notice required by subdivision (a) shall include a warning in substantially the following form:

''WARNING

''Subject to certain exceptions, you have only six (6) months from the date this notice was personally delivered or deposited in the mail to file a court action on this claim. See Government Code Section 945.6.

''You may seek the advice of an attorney of your choice in connection with this matter. If you desire to consult an attorney, you should do so immediately.''

SEC. 7. Section 915 of the Government Code is amended to read:

915. (a) A claim, any amendment thereto, or an application to the public entity for leave to present a late claim shall be presented to a local public entity by either of the following means:

(1) Delivering it to the clerk, secretary or auditor thereof.

(2) Mailing it to the clerk, secretary, auditor, or to the governing body at its principal office.

(b) Except as provided in subdivision (c), a claim, any amendment thereto, or an application for leave to file a late claim shall be presented to the state by either of the following means:

(1) Delivering it to an office of the Victim Compensation and Government Claims Board.

(2) Mailing it to the Victim Compensation and Government Claims Board at its principal office.

(c) A claim, any amendment thereto, or an application for leave to file a late claim shall be presented to a judicial branch entity in accordance with the following means:

(1) Delivering or mailing it to the court executive officer, if against a superior court or a judge, court executive officer, or trial court employee, as defined in Section 811.9, of that court.

(2) Delivering or mailing it to the clerk/administrator of the court of appeals, if against a court of appeals or a judge of that court.

(3) Delivering or mailing it to the Clerk of the Supreme Court, if against the Supreme Court or a judge of that court.

(4) Delivering or mailing it to the Secretariat of the Judicial Council, if against the Judicial Council or the Administrative Office of the Courts.

(d) A claim, amendment or application shall be deemed to have been presented in compliance with this section even though it is not delivered

or mailed as provided in this section if it is actually received by the clerk, secretary, auditor or board of the local public entity, is actually received at an office of the Victim Compensation and Government Claims Board, or, if against a judicial branch entity or judge, it is actually received by the court executive officer, court clerk/administrator, court clerk, or secretariat of the judicial branch entity, within the time prescribed for presentation thereof.

(e) A claim, amendment or application shall be deemed to have been presented in compliance with this section to a public agency as defined in Section 53050 if it is delivered or mailed within the time prescribed for presentation thereof in conformity with the information contained in the statement in the Roster of Public Agencies pertaining to that public agency which is on file at the time the claim, amendment or application is delivered or mailed. As used in this subdivision, ''statement in the Roster of Public Agencies'' means the statement or amended statement in the Roster of Public Agencies in the office of the Secretary of State or in the office of the county clerk of any county in which the statement or amended statement is on file.

SEC. 8. Section 935.6 of the Government Code is amended to read:

935.6. (a) The Victim Compensation and Government Claims Board may authorize any state agency to settle and pay claims filed pursuant to subdivision (c) of Section 905.2 if the settlement does not exceed one thousand dollars ($1,000) or that lesser amount as the board may determine, or to reject the claim and provide the notice required by Section 913. The board may require state agencies that it so authorizes to report annually to the board concerning the claims resolved pursuant to this section.

(b) As used in this section, ''state agency'' means any office, officer, department, division, bureau, board, commission, or agency of the state, claims against which are paid by warrants drawn by the Controller, but does not mean any judicial branch entity, as defined in Section 900.3, or any judge thereof.

SEC. 9. Section 935.8 is added to the Government Code, to read:

935.8. The Judicial Council may adjust and pay any claim arising out of the activities of a judicial branch entity or judge thereof. The Judicial Council may adopt rules of court authorizing any committee of the Judicial Council or employee of the Administrative Office of the Courts to perform the functions of the Judicial Council under this section.

SEC. 10. Section 940.2 of the Government Code is amended to read:

940.2. ''Board'' means:

(a) In the case of a local public entity, the governing body of the local public entity.

(b) In the case of the state, except as provided by subdivision (c), the Victim Compensation and Government Claims Board.

(c) In the case of a judicial branch entity or a judge thereof, the Judicial Council.

SEC. 11. Section 940.3 is added to the Government Code, to read:

940.3. A ''judicial branch entity'' is a public entity and means any superior court, court of appeals, the Supreme Court, the Judicial Council, or the Administrative Office of the Courts.

SEC. 12. Section 946.6 of the Government Code is amended to read:

946.6. (a) If an application for leave to present a claim is denied or deemed to be denied pursuant to Section 911.6, a petition may be made to the court for an order relieving the petitioner from Section 945.4. The proper court for filing the petition is a superior court that would be a proper court for the trial of an action on the cause of action to which the claim relates. If the petition is filed in a court which is not a proper court for the determination of the matter, the court, on motion of any party, shall transfer the proceeding to a proper court. If an action on the cause of action to which the claim relates would be a limited civil case, a proceeding pursuant to this section is a limited civil case.

(b) The petition shall show each of the following:

(1) That application was made to the board under Section 911.4 and was denied or deemed denied.

(2) The reason for failure to present the claim within the time limit specified in Section 911.2.

(3) The information required by Section 910.

The petition shall be filed within six months after the application to the board is denied or deemed to be denied pursuant to Section 911.6.

(c) The court shall relieve the petitioner from the requirements of Section 945.4 if the court finds that the application to the board under Section 911.4 was made within a reasonable time not to exceed that specified in subdivision (b) of Section 911.4 and was denied or deemed denied pursuant to Section 911.6 and that one or more of the following is applicable:

(1) The failure to present the claim was through mistake, inadvertence, surprise, or excusable neglect unless the public entity establishes that it would be prejudiced in the defense of the claim if the court relieves the petitioner from the requirements of Section 945.4.

(2) The person who sustained the alleged injury, damage or loss was a minor during all of the time specified in Section 911.2 for the presentation of the claim.

(3) The person who sustained the alleged injury, damage or loss was physically or mentally incapacitated during all of the time specified in Section 911.2 for the presentation of the claim and by reason of that disability failed to present a claim during that time.

(4) The person who sustained the alleged injury, damage or loss died before the expiration of the time specified in Section 911.2 for the presentation of the claim.

(d) A copy of the petition and a written notice of the time and place of hearing shall be served before the hearing as prescribed by subdivision (b) of Section 1005 of the Code of Civil Procedure on (1) the clerk or secretary or board of the local public entity, if the respondent is a local public entity, or (2) the Attorney General, if the respondent is the state. If the petition involves a claim arising out of alleged actions or inactions of the Department of Transportation, service of the petition and notice of the hearing shall be made on the Attorney General or the Director of Transportation. Service on the Attorney General may be accomplished at any of the Attorney General's offices in Los Angeles, Sacramento, San Diego, or San Francisco. Service on the Director of Transportation may be accomplished only at the Department of Transportation's headquarters office in Sacramento. If the petition involves a claim arising out of alleged actions or inactions of a judicial branch entity, service of the petition and notice of the hearing shall be made in accordance with the following:

(1) If the petition involves a claim arising out of alleged actions or inactions of a superior court or a judge, court executive officer, or trial court employee, as defined in Section 811.9, of the court, service shall be made on the court executive officer.

(2) If the petition involves a claim arising out of alleged actions or inactions of a court of appeals or a judge thereof, service shall be made on the Clerk/Administrator of the court of appeals.

(3) If the petition involves a claim arising out of alleged actions or inactions of the Supreme Court or a judge thereof, service shall be made on the Clerk of the Supreme Court.

(4) If the petition involves a claim arising out of alleged actions or inactions of the Judicial Council or the Administrative Office of the Courts, service shall be made on the secretariat of the Judicial Council.

(e) The court shall make an independent determination upon the petition. The determination shall be made upon the basis of the petition, any affidavits in support of or in opposition to the petition, and any additional evidence received at the hearing on the petition.

(f) If the court makes an order relieving the petitioner from Section 945.4, suit on the cause of action to which the claim relates shall be filed with the court within 30 days thereafter.

SEC. 13. Section 948 of the Government Code is amended to read:

948. (a) The head of the state agency concerned, upon recommendation of the Attorney General or other attorney authorized to represent the state, may settle, adjust, or compromise any pending action where the Director of Finance certifies that a sufficient appropriation for

the payment of claims exists. Claims arising out of the activities of the State Department of Transportation may be paid if either the Director of Transportation or the Director of Finance certifies that a sufficient appropriation for the payment of the claim exists.

(b) If no funds or insufficient funds for the payment exist, the head of the state agency concerned, upon recommendation of the Attorney General or other attorney authorized to represent the state, may settle, adjust or compromise any pending action with the approval of the Department of Finance.

(c) As used in this section, ''state agency'' means any office, officer, department, division, bureau, board, commission or agency of the state claims against which are paid by warrants drawn by the Controller, but does not mean any ''judicial branch entity'' as defined in Section 940.3 or any judge thereof.

SEC. 14. Section 948.1 is added to the Government Code, to read:

948.1. The Judicial Council may settle, adjust, or compromise any pending action arising out of the activities of a judicial branch entity or judge thereof. The Judicial Council may adopt rules of court authorizing any committee of the Judicial Council or employee of the Administrative Office of the Courts to perform the functions of the Judicial Council under this section.

SEC. 15. Section 955.4 of the Government Code is amended to read:

955.4. Except as provided in Sections 811.9, 955.6, 955.8, and 955.9:

(a) Service of summons in all actions on claims against the state shall be made on the Attorney General.

(b) The Attorney General shall defend all actions on claims against the state.

SEC. 16. Section 955.9 is added to the Government Code, to read:

955.9. In actions on claims against a judicial branch entity, service of summons shall be made on:

(a) The court executive officer, in actions on claims against a superior court or a judge thereof.

(b) The Clerk/Administrator of the Court of Appeal, in actions on claims against a court of appeals or a judge thereof.

(c) The Clerk of the Supreme Court, in actions on claims against the Supreme Court or a judge thereof.

(d) The Secretariat of the Judicial Council, in actions on claims against the Judicial Council or the Administrative Office of the Courts.

SEC. 17. Section 965 of the Government Code is amended to read:

965. (a) Upon the allowance by the Victim Compensation and Government Claims Board of all or part of a claim for which the Director of Finance certifies that a sufficient appropriation for the payment of the claim exists, and the execution and presentation of documents the board

may require which discharge the state of all liability under the claim, the board shall designate the fund from which the claim is to be paid and the state agency concerned shall pay the claim from that fund. If there is no sufficient appropriation for the payment available, the board shall report to the Legislature in accordance with Section 912.8. Claims arising out of the activities of the State Department of Transportation may be paid if either the Director of Transportation or the Director of Finance certifies that a sufficient appropriation for the payment of the claim exists.

(b) Notwithstanding subdivision (a), if there is no sufficient appropriation for the payment of claims, settlements, or judgments against the state arising from an action in which the state is represented by the Attorney General, the Attorney General shall report the claims, settlements, and judgments to the Chairperson of either the Senate Committee on Appropriations or the Assembly Committee on Budget, who shall cause to be introduced legislation appropriating funds for the payment of the claims, settlements, or judgments.

(c) Notwithstanding subdivision (a) or (b), claims, settlements, or judgments arising out of the activities of a judicial branch entity, as defined by Sections 900.3 and 940.3, or a judge thereof may be paid if the Judicial Council authorizes payment and the Administrative Director of the Courts certifies that sufficient funds for that payment exist from funds allocated to settlement, adjustment, and compromise of actions and claims. If sufficient funds for payment of settlements or judgments do not exist, the Administrative Director of the Courts shall report the settlements and judgments to the Chairperson of either the Senate Committee on Appropriations or the Assembly Committee on Budget, who shall cause to be introduced legislation appropriating funds for the payment of the settlements or judgments. If sufficient funds for payment of claims do not exist, the Administrative Director of the Courts shall report the claims to the Victim Compensation and Government Claims Board, which shall have 90 days to object to payment. The Administrative Director of the Courts shall confer with the chairperson of the Victim Compensation and Government Claims Board regarding any objection received during the 90-day period. If the Victim Compensation and Government Claims Board withdraws the objection, or if no objection was received, the Administrative Director of the Courts shall report the claims to the Chairperson of either the Senate Committee on Appropriations or the Assembly Committee on the Budget, who shall cause to be introduced legislation appropriating funds for the payment of the claims. The Judicial Council may authorize any committee of the Judicial Council or any employee of the Administrative Office of the Courts to perform the functions of the Judicial Council under this section. The Administrative Director of the

Courts may designate an executive staff member of the Administrative Office of the Courts to perform the functions of the Administrative Director of the Courts under this section.

SEC. 18. Section 965.2 of the Government Code is amended to read:

965.2. (a) The Controller shall draw a warrant for the payment of any final judgment or settlement against the state whenever the Director of Finance certifies that a sufficient appropriation for the payment of the judgment or settlement exists. Claims upon those judgments and settlements are exempt from Section 925.6. Claims arising out of the activities of the State Department of Transportation may be paid if either the Director of Transportation or the Director of Finance certifies that a sufficient appropriation for the payment of the claim exists.

(b) Notwithstanding subdivision (a), the Controller shall draw a warrant for the payment of any final judgment or settlement based on claims arising out of the activities of a judicial branch entity, as defined by Sections 900.3 and 940.3, or a judge thereof, whenever the Administrative Director of the Courts certifies that sufficient funds for that payment exist from funds allocated to settlement, adjustment, and compromise of actions and claims. Claims upon those judgments and settlements are exempt from Section 925.6. Claims arising out of the activities of a judicial branch entity, as defined by Sections 900.3 and 940.3, or a judge thereof, may be paid if the Administrative Director of the Courts certifies that sufficient funds for the payment exist from funds allocated to settlement, adjustment, and compromise of actions and claims. The Administrative Director of the Courts may designate an executive staff member of the Administrative Office of the Courts to perform the certification of funds pursuant to this section.

SEC. 19. Section 965.6 of the Government Code is amended to read:

965.6. Notwithstanding any other provision of law, neither the state nor a judicial branch entity, nor any officers or employees thereof, may be required by any court in any proceeding to pay or offset a tort liability claim, settlement, or judgment for which the state or judicial branch entity is liable, unless one of the following conditions exists:

(a) The Legislature has authorized the payment or offset of the specific tort liability claim, settlement, or judgment.

(b) The Director of Finance, or the Director of Transportation for claims arising out of the activities of the Department of Transportation, has certified that a sufficient appropriation for the payment of the claim, settlement, or judgment or to provide for that offset exists. This subdivision does not apply to claims arising out of the activities of a judicial branch entity or a judge thereof.

(c) In the case of claims arising out of the activities of a judicial branch entity, as defined in Sections 900.3 and 940.3, or a judge thereof, the Administrative Director of the Courts has certified that sufficient

funds for payment of the claim, settlement, or judgment, or to provide for that offset, exist from funds allocated to settlement, adjustment, and compromise of pending actions and claims. The Administrative Director of the Courts may designate an executive staff member of the Administrative Office of the Courts to perform the certification of funds pursuant to this section.

SEC. 20. Section 965.65 of the Government Code is amended to read:

965.65. (a) If a request is made for certification of availability of funds, approval of a settlement, or inclusion of a claim in a claims bill pursuant to Section 948, 965, or 965.2 for a claim in excess of thirty-five thousand dollars ($35,000) against the state which arose from the activities of any state agency or employee, the agency shall report to the Director of Finance concerning any action it has taken or proposes to take to prevent the future occurrence of circumstances similar to those upon which the claim was based, including any imposition of disciplinary action.

(b) This section does not apply to a judicial branch entity, as defined in Sections 900.3 and 940.3, or claims arising out of the activities of a judicial branch entity or a judge or employee thereof. However, in the case of the categories of claims and settlements described in subdivision (a) arising out of activities of a judicial branch entity or a judge, court executive officer, or employee thereof, the Administrative Director of the Courts shall report to the Judicial Council concerning any action the Administrative Office of the Courts has taken or proposes to take to prevent the future occurrence of circumstances similar to those upon which the claim was based, including any imposition of disciplinary action.

CHAPTER 1008

An act to amend Sections 228, 527.6, 527.8, 638, 1281.95, and 1987 of the Code of Civil Procedure, to amend Sections 307, 5211, 7211, and 9211 of the Corporations Code, to amend Sections 2106 and 3111 of the Family Code, to amend Sections 7.6, 68085, and 68203.1 of, to add Sections 20902.5, 68087.1, and 69645 to, and to repeal Sections 69510, 69510.5, and 69510.6 of, the Government Code, to amend Section 1328 of the Penal Code, to amend Sections 1513.1, 1851, and 1851.5 of the Probate Code, and to amend Section 213.5 of the Welfare and Institutions Code, relating to courts, and making an appropriation therefor.

[Approved by Governor September 27, 2002. Filed with
Secretary of State September 27, 2002.]

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

SECTION 1. Section 228 of the Code of Civil Procedure is amended to read:

228. Challenges for general disqualification may be taken on one or both of the following grounds, and for no other:

(a) A want of any of the qualifications prescribed by this code to render a person competent as a juror.

(b) The existence of any incapacity which satisfies the court that the challenged person is incapable of performing the duties of a juror in the particular action without prejudice to the substantial rights of the challenging party.

SEC. 2. Section 527.6 of the Code of Civil Procedure is amended to read:

527.6. (a) A person who has suffered harassment as defined in subdivision (b) may seek a temporary restraining order and an injunction prohibiting harassment as provided in this section.

(b) For the purposes of this section, ''harassment'' is unlawful violence, a credible threat of violence, or a knowing and willful course of conduct directed at a specific person that seriously alarms, annoys, or harasses the person, and that serves no legitimate purpose. The course of conduct must be such as would cause a reasonable person to suffer substantial emotional distress, and must actually cause substantial emotional distress to the plaintiff.

As used in this subdivision:

(1) ''Unlawful violence'' is any assault or battery, or stalking as prohibited in Section 646.9 of the Penal Code, but shall not include lawful acts of self-defense or defense of others.

(2) ''Credible threat of violence'' is a knowing and willful statement or course of conduct that would place a reasonable person in fear for his or her safety, or the safety of his or her immediate family, and that serves no legitimate purpose.

(3) ''Course of conduct'' is a pattern of conduct composed of a series of acts over a period of time, however short, evidencing a continuity of purpose, including following or stalking an individual, making harassing telephone calls to an individual, or sending harassing correspondence to an individual by any means, including, but not limited to, the use of public or private mails, interoffice mail, fax, or computer e-mail. Constitutionally protected activity is not included within the meaning of ''course of conduct.''

(c) Upon filing a petition for an injunction under this section, the plaintiff may obtain a temporary restraining order in accordance with Section 527, except to the extent this section provides a rule that is inconsistent. A temporary restraining order may be issued with or without notice upon an affidavit that, to the satisfaction of the court, shows reasonable proof of harassment of the plaintiff by the defendant, and that great or irreparable harm would result to the plaintiff. In the discretion of the court, and on a showing of good cause, a temporary restraining order or injunction issued under this section may include other named family or household members who reside with the plaintiff. A temporary restraining order issued under this section shall remain in effect, at the court's discretion, for a period not to exceed 15 days, or, if the court extends the time for hearing under subdivision (d), not to exceed 22 days, unless otherwise modified or terminated by the court.

(d) Within 15 days, or, if good cause appears to the court, 22 days from the date the temporary restraining order is issued, a hearing shall be held on the petition for the injunction. The defendant may file a response that explains, excuses, justifies, or denies the alleged harassment or may file a cross-complaint under this section. At the hearing, the judge shall receive any testimony that is relevant, and may make an independent inquiry. If the judge finds by clear and convincing evidence that unlawful harassment exists, an injunction shall issue prohibiting the harassment. An injunction issued pursuant to this section shall have a duration of not more than three years. At any time within the three months before the expiration of the injunction, the plaintiff may apply for a renewal of the injunction by filing a new petition for an injunction under this section.

(e) This section does not preclude either party from representation by private counsel or from appearing on the party's own behalf.

(f) In a proceeding under this section where there are allegations or threats of domestic violence, a support person may accompany a party in court and, where the party is not represented by an attorney, may sit with the party at the table that is generally reserved for the party and the party's attorney. The support person is present to provide moral and emotional support for a person who alleges he or she is a victim of domestic violence. The support person is not present as a legal adviser and shall not give legal advice. The support person shall assist the person who alleges he or she is a victim of domestic violence in feeling more confident that he or she will not be injured or threatened by the other party during the proceedings where the person who alleges he or she is a victim of domestic violence and the other party must be present in close proximity. This subdivision does not preclude the court from exercising its discretion to remove the support person from the courtroom if the

court believes the support person is prompting, swaying, or influencing the party assisted by the support person.

(g) Upon filing of a petition for an injunction under this section, the defendant shall be personally served with a copy of the petition, temporary restraining order, if any, and notice of hearing of the petition. Service shall be made at least five days before the hearing. The court may for good cause, on motion of the plaintiff or on its own motion, shorten the time for service on the defendant.

(h) The court shall order the plaintiff or the attorney for the plaintiff to deliver a copy of each temporary restraining order or injunction, or modification or termination thereof, granted under this section, by the close of the business day on which the order was granted, to the law enforcement agencies within the court's discretion as are requested by the plaintiff. Each appropriate law enforcement agency shall make available information as to the existence and current status of these orders to law enforcement officers responding to the scene of reported harassment.

An order issued under this section shall, on request of the plaintiff, be served on the defendant, whether or not the defendant has been taken into custody, by any law enforcement officer who is present at the scene of reported harassment involving the parties to the proceeding. The plaintiff shall provide the officer with an endorsed copy of the order and a proof of service that the officer shall complete and send to the issuing court.

Upon receiving information at the scene of an incident of harassment that a protective order has been issued under this section, or that a person who has been taken into custody is the subject of an order, if the protected person cannot produce a certified copy of the order, a law enforcement officer shall immediately attempt to verify the existence of the order.

If the law enforcement officer determines that a protective order has been issued, but not served, the officer shall immediately notify the defendant of the terms of the order and shall at that time also enforce the order. Verbal notice of the terms of the order shall constitute service of the order and is sufficient notice for the purposes of this section and for the purposes of Section 273.6 and subdivision (g) of Section 12021 of the Penal Code.

(i) The prevailing party in any action brought under this section may be awarded court costs and attorney's fees, if any.

(j) Any willful disobedience of any temporary restraining order or injunction granted under this section is punishable pursuant to Section 273.6 of the Penal Code.

(k) This section does not apply to any action or proceeding covered by Title 1.6C (commencing with Section 1788) of the Civil Code or by Division 10 (commencing with Section 6200) of the Family Code.

Nothing in this section shall preclude a plaintiff's right to use other existing civil remedies.

(*l*) The Judicial Council shall promulgate forms and instructions therefor, and rules for service of process, scheduling of hearings, and any other matters required by this section. The petition and response forms shall be simple and concise, and their use by parties in actions brought pursuant to this section shall be mandatory.

(m) A temporary restraining order or injunction relating to harassment or 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.

(n) Information on any temporary restraining order or injunction relating to harassment or 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.

(o) There shall be no filing fee for a petition that alleges that a person has inflicted or threatened violence against the petitioner, or stalked the petitioner, or acted or spoke in any other manner that has placed the petitioner in reasonable fear of violence, and that seeks a protective or restraining order or injunction restraining stalking or future violence or threats of violence, in any action brought pursuant to this section. No fee shall be paid for filing a response to a petition alleging these acts.

SEC. 3. Section 527.8 of the Code of Civil Procedure is amended to read:

527.8. (a) Any employer, whose employee has suffered unlawful violence or a credible threat of violence from any individual, that can reasonably be construed to be carried out or to have been carried out at the workplace, may seek a temporary restraining order and an injunction on behalf of the employee prohibiting further unlawful violence or threats of violence by that individual.

(b) For the purposes of this section:

(1) ''Unlawful violence'' is any assault or battery, or stalking as prohibited in Section 646.9 of the Penal Code, but shall not include lawful acts of self-defense or defense of others.

(2) ''Credible threat of violence'' is a knowing and willful statement or course of conduct that would place a reasonable person in fear for his or her safety, or the safety of his or her immediate family, and that serves no legitimate purpose.

(3) ''Course of conduct'' is a pattern of conduct composed of a series of acts over a period of time, however short, evidencing a continuity of purpose, including following or stalking an employee to or from the place of work; entering the workplace; following an employee during hours of employment; making telephone calls to an employee; or sending correspondence to an employee by any means, including, but not limited to, the use of the public or private mails, interoffice mail, fax, or computer e-mail.

(c) This section does not permit a court to issue a temporary restraining order or injunction prohibiting speech or other activities that are constitutionally protected, or otherwise protected by Section 527.3 or any other provision of law.

(d) For purposes of this section, the terms ''employer'' and ''employee'' mean persons defined in Section 350 of the Labor Code. ''Employer'' also includes a federal agency, the state, a state agency, a city, county, or district, and a private, public, or quasi-public corporation, or any public agency thereof or therein. ''Employee'' also includes the members of boards of directors of private, public, and quasi-public corporations and elected and appointed public officers. For purposes of this section only, ''employee'' also includes a volunteer or independent contractor who performs services for the employer at the employer's worksite.

(e) Upon filing a petition for an injunction under this section, the plaintiff may obtain a temporary restraining order in accordance with subdivision (a) of Section 527, if the plaintiff also files an affidavit that, to the satisfaction of the court, shows reasonable proof that an employee has suffered unlawful violence or a credible threat of violence by the defendant, and that great or irreparable harm would result to an employee. In the discretion of the court, and on a showing of good cause, a temporary restraining order or injunction issued under this section may include other named family or household members who reside with the employee.

A temporary restraining order granted under this section shall remain in effect, at the court's discretion, for a period not to exceed 15 days, unless otherwise modified or terminated by the court.

(f) Within 15 days of the filing of the petition, a hearing shall be held on the petition for the injunction. The defendant may file a response that explains, excuses, justifies, or denies the alleged unlawful violence or credible threats of violence or may file a cross-complaint under this section. At the hearing, the judge shall receive any testimony that is relevant and may make an independent inquiry. Moreover, if the defendant is a current employee of the entity requesting the injunction, the judge shall receive evidence concerning the employer's decision to retain, terminate, or otherwise discipline the defendant. If the judge finds

by clear and convincing evidence that the defendant engaged in unlawful violence or made a credible threat of violence, an injunction shall issue prohibiting further unlawful violence or threats of violence. An injunction issued pursuant to this section shall have a duration of not more than three years. At any time within the three months before the expiration of the injunction, the plaintiff may apply for a renewal of the injunction by filing a new petition for an injunction under this section.

(g) This section does not preclude either party from representation by private counsel or from appearing on his or her own behalf.

(h) Upon filing of a petition for an injunction under this section, the defendant shall be personally served with a copy of the petition, temporary restraining order, if any, and notice of hearing of the petition. Service shall be made at least five days before the hearing. The court may, for good cause, on motion of the plaintiff or on its own motion, shorten the time for service on the defendant.

(i) The court shall order the plaintiff or the attorney for the plaintiff to deliver a copy of each temporary restraining order or injunction, or modification or termination thereof, granted under this section, by the close of the business day on which the order was granted, to the law enforcement agencies within the court's discretion as are requested by the plaintiff. Each appropriate law enforcement agency shall make available information as to the existence and current status of these orders to law enforcement officers responding to the scene of reported unlawful violence or a credible threat of violence.

(j) Any intentional disobedience of any temporary restraining order or injunction granted under this section is punishable pursuant to Section 273.6 of the Penal Code.

(k) Nothing in this section may be construed as expanding, diminishing, altering, or modifying the duty, if any, of an employer to provide a safe workplace for employees and other persons.

(*l*) The Judicial Council shall develop forms, instructions, and rules for scheduling of hearings and other procedures established pursuant to this section. The forms for the petition and response shall be simple and concise, and their use by parties in actions brought pursuant to this section shall be mandatory.

(m) A temporary restraining order or injunction relating to harassment or 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.

(n) Information on any temporary restraining order or injunction relating to harassment or 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.

(o) There is no filing fee for a petition that alleges that a person has inflicted or threatened violence against an employee of the petitioner, or stalked the employee, or acted or spoke in any other manner that has placed the employee in reasonable fear of violence, and that seeks protective or restraining orders or injunctions restraining stalking or future violence or threats of violence, in any action brought pursuant to this section. No fee shall be paid for filing a response to a petition alleging these acts.

SEC. 4. Section 638 of the Code of Civil Procedure is amended to read:

638. A referee may be appointed upon the agreement of the parties filed with the clerk, or judge, or entered in the minutes, or upon the motion of a party to a written contract or lease that provides that any controversy arising therefrom shall be heard by a referee if the court finds a reference agreement exists between the parties:

(a) To hear and determine any or all of the issues in an action or proceeding, whether of fact or of law, and to report a statement of decision.

(b) To ascertain a fact necessary to enable the court to determine an action or proceeding.

(c) In any matter in which a referee is appointed pursuant to this section, a copy of the order shall be forwarded to the office of the presiding judge. The Judicial Council shall, by rule, collect information on the use of these referees. The Judicial Council shall also collect information on fees paid by the parties for the use of referees to the extent that information regarding those fees is reported to the court. The Judicial Council shall report thereon to the Legislature by July 1, 2003. This subdivision shall become inoperative on January 1, 2004.

SEC. 5. Section 1281.95 of the Code of Civil Procedure is amended to read:

1281.95. (a) In a binding arbitration of any claim for more than three thousand dollars ($3,000) pursuant to a contract for the construction or improvement of residential property consisting of one to four units, the arbitrator shall, within 10 days following his or her appointment, provide to each party a written declaration under penalty of perjury. This declaration shall disclose (1) whether the arbitrator or his or her employer or arbitration service had or has a personal or professional affiliation with either party, and (2) whether the arbitrator or his or her employer or arbitration service has been selected or designated as an arbitrator by either party in another transaction.

(b) If the arbitrator discloses an affiliation with either party, discloses that the arbitrator has been selected or designated as an arbitrator by either party in another arbitration, or fails to comply with this section, he or she may be disqualified from the arbitration by either party.

(c) A notice of disqualification shall be served within 15 days after the arbitrator makes the required disclosures or fails to comply. The right of a party to disqualify an arbitrator shall be waived if the party fails to serve the notice of disqualification pursuant to this subdivision unless the arbitration makes a material omission or material misrepresentation in his or her disclosure. Nothing in this section shall limit the right of a party to vacate an award pursuant to Section 1286.2, or to disqualify an arbitrator pursuant to any other law or statute.

SEC. 6. Section 1987 of the Code of Civil Procedure is amended to read:

1987. (a) Except as provided in Sections 68097.1 to 68097.8, inclusive, of the Government Code, the service of a subpoena is made by delivering a copy, or a ticket containing its substance, to the witness personally, giving or offering to the witness at the same time, if demanded by him or her, the fees to which he or she is entitled for travel to and from the place designated, and one day's attendance there. The service shall be made so as to allow the witness a reasonable time for preparation and travel to the place of attendance. The service may be made by any person. If service is to be made on a minor, service shall be made on the minor's parent, guardian, conservator, or similar fiduciary, or if one of those persons cannot be located with reasonable diligence, service shall be made on any person having the care or control of the minor or with whom the minor resides or by whom the minor is employed, and on the minor if the minor is 12 years of age or older. If the minor is alleged to come within the description of Section 300, 601, or 602 of the Welfare and Institutions Code and the minor is not in the custody of a parent or guardian, regardless of the age of the minor, service also shall be made upon the designated agent for service of process at the county child welfare department or the probation department under whose jurisdiction the minor has been placed.

(b) In the case of the production of a party to the record of any civil action or proceeding or of a person for whose immediate benefit an action or proceeding is prosecuted or defended or of anyone who is an officer, director, or managing agent of any such party or person, the service of a subpoena upon any such witness is not required if written notice requesting the witness to attend before a court, or at a trial of an issue therein, with the time and place thereof, is served upon the attorney of that party or person. The notice shall be served at least 10 days before the time required for attendance unless the court prescribes a shorter time. If entitled thereto, the witness, upon demand, shall be paid witness

fees and mileage before being required to testify. The giving of the notice shall have the same effect as service of a subpoena on the witness, and the parties shall have those rights and the court may make those orders, including the imposition of sanctions, as in the case of a subpoena for attendance before the court.

(c) If the notice specified in subdivision (b) is served at least 20 days before the time required for attendance, or within any shorter period of time as the court may order, it may include a request that the party or person bring with him or her books, documents or other things. The notice shall state the exact materials or things desired and that the party or person has them in his or her possession or under his or her control. Within five days thereafter, or any other time period as the court may allow, the party or person of whom the request is made may serve written objections to the request or any part thereof, with a statement of grounds. Thereafter, upon noticed motion of the requesting party, accompanied by a showing of good cause and of materiality of the items to the issues, the court may order production of items to which objection was made, unless the objecting party or person establishes good cause for nonproduction or production under limitations or conditions. The procedure of this subdivision is alternative to the procedure provided by Sections 1985 and 1987.5 in the cases herein provided for, and no subpoena duces tecum shall be required.

Subject to this subdivision, the notice provided in this subdivision shall have the same effect as is provided in subdivision (b) as to a notice for attendance of that party or person.

SEC. 7. Section 307 of the Corporations Code, as amended by Section 1 of Chapter 136 of the Statutes of 1997, is amended to read:

307. (a) Unless otherwise provided in the articles or, subject to paragraph (5) of subdivision (a) of Section 204, in the bylaws, all of the following apply:

(1) Meetings of the board may be called by the chair of the board or the president or any vice president or the secretary or any two directors.

(2) Regular meetings of the board may be held without notice if the time and place of the meetings are fixed by the bylaws or the board. Special meetings of the board shall be held upon four days' notice by mail or 48 hours' notice delivered personally or by telephone, including a voice messaging system or other system or technology designed to record and communicate messages, telegraph, facsimile, electronic mail, or other electronic means. The articles or bylaws may not dispense with notice of a special meeting. A notice, or waiver of notice, need not specify the purpose of any regular or special meeting of the board.

(3) Notice of a meeting need not be given to a director who signs a waiver of notice or a consent to holding the meeting or an approval of the minutes thereof, whether before or after the meeting, or who attends

the meeting without protesting, prior thereto or at its commencement, the lack of notice to that director. These waivers, consents and approvals shall be filed with the corporate records or made a part of the minutes of the meeting.

(4) A majority of the directors present, whether or not a quorum is present, may adjourn any meeting to another time and place. If the meeting is adjourned for more than 24 hours, notice of an adjournment to another time or place shall be given prior to the time of the adjourned meeting to the directors who were not present at the time of the adjournment.

(5) Meetings of the board may be held at a place within or without the state that has been designated in the notice of the meeting or, if not stated in the notice or there is no notice, designated in the bylaws or by resolution of the board.

(6) Members of the board may participate in a meeting through use of conference telephone, electronic video screen communication, or other communications equipment. Participation in a meeting through use of conference telephone pursuant to this subdivision constitutes presence in person at that meeting as long as all members participating in the meeting are able to hear one another. Participation in a meeting through the use of electronic video screen communication or other communications equipment, other than conference telephone, pursuant to this subdivision constitutes presence in person at that meeting if all of the following apply:

(A) Each member participating in the meeting can communicate with all of the other members concurrently.

(B) Each member is provided the means of participating in all matters before the board, including, without limitation, the capacity to propose, or to interpose an objection to, a specific action to be taken by the corporation.

(C) The corporation adopts and implements some means of verifying both of the following:

(i) A person participating in the meeting is a director or other person entitled to participate in the board meeting.

(ii) All actions of, or votes by, the board are taken or cast only by the directors and not by persons who are not directors.

(7) A majority of the authorized number of directors constitutes a quorum of the board for the transaction of business. The articles or bylaws may not provide that a quorum shall be less than one-third the authorized number of directors or less than two, whichever is larger, unless the authorized number of directors is one, in which case one director constitutes a quorum.

(8) An act or decision done or made by a majority of the directors present at a meeting duly held at which a quorum is present is the act of

the board, subject to the provisions of Section 310 and subdivision (e) of Section 317. The articles or bylaws may not provide that a lesser vote than a majority of the directors present at a meeting is the act of the board. A meeting at which a quorum is initially present may continue to transact business notwithstanding the withdrawal of directors, if any action taken is approved by at least a majority of the required quorum for that meeting.

(b) An action required or permitted to be taken by the board may be taken without a meeting, if all members of the board shall individually or collectively consent in writing to that action. The written consent or consents shall be filed with the minutes of the proceedings of the board. The action by written consent shall have the same force and effect as a unanimous vote of the directors.

(c) This section applies also to committees of the board and incorporators and action by those committees and incorporators, mutatis mutandis.

(d) This section shall remain in effect only until January 1, 2004, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2004, deletes or extends that date.

SEC. 8. Section 307 of the Corporations Code, as amended by Section 2 of Chapter 136 of the Statutes of 1997, is amended to read:

307. (a) Unless otherwise provided in the articles or, subject to paragraph (5) of subdivision (a) of Section 204 in the bylaws:

(1) Meetings of the board may be called by the chairperson of the board or the president or any vice president or the secretary or any two directors.

(2) Regular meetings of the board may be held without notice if the time and place of the meetings are fixed by the bylaws or the board. Special meetings of the board shall be held upon four days' notice by mail or 48 hours' notice delivered personally or by telephone, including a voice messaging system or other system or technology designed to record and communicate messages, telegraph, facsimile, electronic mail, or other electronic means. The articles or bylaws may not dispense with notice of a special meeting. A notice, or waiver of notice, need not specify the purpose of any regular or special meeting of the board.

(3) Notice of a meeting need not be given to any director who signs a waiver of notice or a consent to holding the meeting or an approval of the minutes thereof, whether before or after the meeting, or who attends the meeting without protesting, prior thereto or at its commencement, the lack of notice to that director. These waivers, consents and approvals shall be filed with the corporate records or made a part of the minutes of the meeting.

(4) A majority of the directors present, whether or not a quorum is present, may adjourn any meeting to another time and place. If the

meeting is adjourned for more than 24 hours, notice of any adjournment to another time or place shall be given prior to the time of the adjourned meeting to the directors who were not present at the time of the adjournment.

(5) Meetings of the board may be held at any place within or without the state which has been designated in the notice of the meeting or, if not stated in the notice or there is no notice, designated in the bylaws or by resolution of the board.

(6) Members of the board may participate in a meeting through use of conference telephone or similar communications equipment, as long as all members participating in the meeting can hear one another. Participation in a meeting pursuant to this subdivision constitutes presence in person at the meeting.

(7) A majority of the authorized number of directors constitutes a quorum of the board for the transaction of business. The articles or bylaws may not provide that a quorum shall be less than one-third the authorized number of directors or less than two, whichever is larger, unless the authorized number of directors is one, in which case one director constitutes a quorum.

(8) Every act or decision done or made by a majority of the directors present at a meeting duly held at which a quorum is present is the act of the board, subject to the provisions of Section 310 and subdivision (e) of Section 317. The articles or bylaws may not provide that a lesser vote than a majority of the directors present at a meeting is the act of the board. A meeting at which a quorum is initially present may continue to transact business notwithstanding the withdrawal of directors, if any action taken is approved by at least a majority of the required quorum for the meeting.

(b) Any action required or permitted to be taken by the board may be taken without a meeting, if all members of the board shall individually or collectively consent in writing to that action. The written consent or consents shall be filed with the minutes of the proceedings of the board. The action by written consent shall have the same force and effect as a unanimous vote of the directors.

(c) The provisions of this section apply also to committees of the board and incorporators and action by such committees and incorporators, mutatis mutandis.

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

SEC. 9. Section 5211 of the Corporations Code, as amended by Section 5 of Chapter 136 of the Statutes of 1997, is amended to read:

5211. (a) Unless otherwise provided in the articles or in the bylaws, all of the following apply:

(1) Meetings of the board may be called by the chair of the board or the president or any vice president or the secretary or any two directors.

(2) Regular meetings of the board may be held without notice if the time and place of the meetings are fixed by the bylaws or the board. Special meetings of the board shall be held upon four days' notice by first-class mail or 48 hours' notice delivered personally or by telephone, including a voice messaging system or other system or technology designed to record and communicate messages, telegraph, facsimile, electronic mail, or other electronic means. The articles or bylaws may not dispense with notice of a special meeting. A notice, or waiver of notice, need not specify the purpose of any regular or special meeting of the board.

(3) Notice of a meeting need not be given to a director who signed a waiver of notice or a written consent to holding the meeting or an approval of the minutes thereof, whether before or after the meeting, or who attends the meeting without protesting, prior thereto or at its commencement, the lack of notice to that director. These waivers, consents and approvals shall be filed with the corporate records or made a part of the minutes of the meetings.

(4) A majority of the directors present, whether or not a quorum is present, may adjourn any meeting to another time and place. If the meeting is adjourned for more than 24 hours, notice of an adjournment to another time or place shall be given prior to the time of the adjourned meeting to the directors who were not present at the time of the adjournment.

(5) Meetings of the board may be held at a place within or without the state that has been designated in the notice of the meeting or, if not stated in the notice or there is no notice, designated in the bylaws or by resolution of the board.

(6) Members of the board may participate in a meeting through use of conference telephone, electronic video screen communication, or other communications equipment. Participation in a meeting through use of conference telephone pursuant to this subdivision constitutes presence in person at that meeting as long as all members participating in the meeting are able to hear one another. Participation in a meeting through use of electronic video screen communication or other communications equipment, other than conference telephone, pursuant to this subdivision constitutes presence in person at that meeting if all of the following apply:

(A) Each member participating in the meeting can communicate with all of the other members concurrently.

(B) Each member is provided the means of participating in all matters before the board, including, without limitation, the capacity to propose, or to interpose an objection to, a specific action to be taken by the corporation.

(C) The corporation adopts and implements some means of verifying both of the following:

(i) A person participating in the meeting is a director or other person entitled to participate in the board meeting.

(ii) All actions of, or votes by, the board are taken or cast only by the directors and not by persons who are not directors.

(7) A majority of the number of directors authorized in the articles or bylaws constitutes a quorum of the board for the transaction of business. The articles or bylaws may not provide that a quorum shall be less than one-fifth the number of directors authorized in the articles or bylaws, or less than two, whichever is larger, unless the number of directors authorized in the articles or bylaws is one, in which case one director constitutes a quorum.

(8) Subject to the provisions of Sections 5212, 5233, 5234, 5235, and subdivision (e) of Section 5238, an act or decision done or made by a majority of the directors present at a meeting duly held at which a quorum is present is the act of the board. The articles or bylaws may not provide that a lesser vote than a majority of the directors present at a meeting is the act of the board. A meeting at which a quorum is initially present may continue to transact business notwithstanding the withdrawal of directors, if any action taken is approved by at least a majority of the required quorum for that meeting, or a greater number required by this division, the articles or bylaws.

(b) An action required or permitted to be taken by the board may be taken without a meeting, if all members of the board shall individually or collectively consent in writing to that action. The written consent or consents shall be filed with the minutes of the proceedings of the board. The action by written consent shall have the same force and effect as the unanimous vote of the directors. For the purposes of this section only, ''all members of the board'' does not include an ''interested director'' as defined in Section 5233.

(c) The provisions of this section apply also to incorporators, to committees of the board, and to action by those incorporators or committees mutatis mutandis.

(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. 10. Section 5211 of the Corporations Code, as amended by Section 6 of Chapter 136 of the Statutes of 1997, is amended to read:

5211. (a) Unless otherwise provided in the articles or in the bylaws:

(1) Meetings of the board may be called by the chairperson of the board or the president or any vice president or the secretary or any two directors.

(2) Regular meetings of the board may be held without notice if the time and place of the meetings are fixed by the bylaws or the board. Special meetings of the board shall be held upon four days' notice by first-class mail or 48 hours' notice delivered personally or by telephone, including a voice messaging system or other system or technology designed to record and communicate messages, telegraph, facsimile, electronic mail, or other electronic means. The articles or bylaws may not dispense with notice of a special meeting. A notice, or waiver of notice, need not specify the purpose of any regular or special meeting of the board.

(3) Notice of a meeting need not be given to any director who signed a waiver of notice or a written consent to holding the meeting or an approval of the minutes thereof, whether before or after the meeting, or who attends the meeting without protesting, prior thereto or at its commencement, the lack of notice to that director. These waivers, consents and approvals shall be filed with the corporate records or made a part of the minutes of the meetings.

(4) A majority of the directors present, whether or not a quorum is present, may adjourn any meeting to another time and place. If the meeting is adjourned for more than 24 hours, notice of any adjournment to another time or place shall be given prior to the time of the adjourned meeting to the directors who were not present at the time of the adjournment.

(5) Meetings of the board may be held at any place within or without the state which has been designated in the notice of the meeting or, if not stated in the notice or there is no notice, designated in the bylaws or by resolution of the board.

(6) Members of the board may participate in a meeting through use of conference telephone or similar communications equipment, as long as all members participating in the meeting can hear one another. Participation in a meeting pursuant to this subdivision constitutes presence in person at the meeting.

(7) A majority of the number of directors authorized in the articles or bylaws constitutes a quorum of the board for the transaction of business. The articles or bylaws may not provide that a quorum shall be less than one-fifth the number of directors authorized in the articles or bylaws, or less than two, whichever is larger, unless the number of directors authorized in the articles or bylaws is one, in which case one director constitutes a quorum.

(8) Subject to the provisions of Sections 5212, 5233, 5234, 5235, and subdivision (e) of Section 5238, every act or decision done or made by a majority of the directors present at a meeting duly held at which a quorum is present is the act of the board. The articles or bylaws may not provide that a lesser vote than a majority of the directors present at a

meeting is the act of the board. A meeting at which a quorum is initially present may continue to transact business notwithstanding the withdrawal of directors, if any action taken is approved by at least a majority of the required quorum for the meeting, or any greater number as is required by this division, the articles or bylaws.

(b) Any action required or permitted to be taken by the board may be taken without a meeting, if all members of the board shall individually or collectively consent in writing to that action. The written consent or consents shall be filed with the minutes of the proceedings of the board. The action by written consent shall have the same force and effect as the unanimous vote of the directors. For the purposes of this section only, ''all members of the board'' does not include any ''interested director'' as defined in Section 5233.

(c) The provisions of this section apply also to incorporators, to committees of the board, and to action by those incorporators or committees mutatis mutandis.

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

SEC. 11. Section 7211 of the Corporations Code, as amended by Section 7 of Chapter 136 of the Statutes of 1997, is amended to read:

7211. (a) Unless otherwise provided in the articles or in the bylaws, all of the following apply:

(1) Meetings of the board may be called by the chair of the board or the president or any vice president or the secretary or any two directors.

(2) Regular meetings of the board may be held without notice if the time and place of the meetings are fixed by the bylaws or the board. Special meetings of the board shall be held upon four days' notice by first-class mail or 48 hours' notice delivered personally or by telephone, including a voice messaging system or other system or technology designed to record and communicate messages, telegraph, facsimile, electronic mail, or other electronic means. The articles or bylaws may not dispense with notice of a special meeting. A notice, or waiver of notice, need not specify the purpose of any regular or special meeting of the board.

(3) Notice of a meeting need not be given to a director who signed a waiver of notice or a written consent to holding the meeting or an approval of the minutes thereof, whether before or after the meeting, or who attends the meeting without protesting, prior thereto or at its commencement, the lack of notice to that director. These waivers, consents and approvals shall be filed with the corporate records or made a part of the minutes of the meetings.

(4) A majority of the directors present, whether or not a quorum is present, may adjourn any meeting to another time and place. If the meeting is adjourned for more than 24 hours, notice of an adjournment to another time or place shall be given prior to the time of the adjourned

meeting to the directors who were not present at the time of the adjournment.

(5) Meetings of the board may be held at a place within or without the state that has been designated in the notice of the meeting or, if not stated in the notice or if there is no notice, designated in the bylaws or by resolution of the board.

(6) Members of the board may participate in a meeting through use of conference telephone, electronic video screen communications, or other communications equipment. Participation in a meeting through use of conference telephone pursuant to this subdivision constitutes presence in person at that meeting as long as all members participating in the meeting are able to hear one another. Participation in a meeting through use of electronic video screen communication or other communications equipment, other than conference telephone, pursuant to this subdivision constitutes presence in person at that meeting if all of the following apply:

(A) Each member participating in the meeting can communicate with all of the other members concurrently.

(B) Each member is provided the means of participating in all matters before the board, including, without limitation, the capacity to propose, or to interpose an objection to, a specific action to be taken by the corporation.

(C) The corporation adopts and implements some means of verifying both of the following:

(i) A person participating in the meeting is a director or other person entitled to participate in the board meeting.

(ii) All actions of, or votes by, the board are taken or cast only by the directors and not by persons who are not directors.

(7) A majority of the number of directors authorized in the articles or bylaws constitutes a quorum of the board for the transaction of business. The articles or bylaws may not provide that a quorum shall be less than one-fifth the number of directors authorized in the articles or bylaws, or less than two, whichever is larger, unless the number of directors authorized in the articles or bylaws is one, in which case one director constitutes a quorum.

(8) Subject to the provisions of Sections 7212, 7233, 7234, and subdivision (e) of Section 7237 and Section 5233, insofar as it is made applicable pursuant to Section 7238, an act or decision done or made by a majority of the directors present at a meeting duly held at which a quorum is present is the act of the board. The articles or bylaws may not provide that a lesser vote than a majority of the directors present at a meeting is the act of the board. A meeting at which a quorum is initially present may continue to transact business notwithstanding the withdrawal of directors, if any action taken is approved by at least a

majority of the required quorum for that meeting, or a greater number required by this division, the articles or bylaws.

(b) An action required or permitted to be taken by the board may be taken without a meeting, if all members of the board shall individually or collectively consent in writing to that action. The written consent or consents shall be filed with the minutes of the proceedings of the board. The action by written consent shall have the same force and effect as a unanimous vote of the directors. For the purposes of this section only, ''all members of the board'' does not include an ''interested director'' as defined in Section 5233, insofar as it is made applicable pursuant to Section 7238.

(c) This section applies also to incorporators, to committees of the board, and to action by those incorporators or committees mutatis mutandis.

(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. 12. Section 7211 of the Corporations Code, as amended by Section 8 of Chapter 136 of the Statutes of 1997, is amended to read:

7211. (a) Unless otherwise provided in the articles or in the bylaws:

(1) Meetings of the board may be called by the chairperson of the board or the president or any vice president or the secretary or any two directors.

(2) Regular meetings of the board may be held without notice if the time and place of the meetings are fixed by the bylaws or the board. Special meetings of the board shall be held upon four days' notice by first-class mail or 48 hours' notice delivered personally or by telephone, including a voice messaging system or other system or technology designed to record and communicate messages, telegraph, facsimile, electronic mail, or other electronic means. The articles or bylaws may not dispense with notice of a special meeting. A notice, or waiver of notice, need not specify the purpose of any regular or special meeting of the board.

(3) Notice of a meeting need not be given to any director who signed a waiver of notice or a written consent to holding the meeting or an approval of the minutes thereof, whether before or after the meeting, or who attends the meeting without protesting, prior thereto or at its commencement, the lack of notice to that director. These waivers, consents and approvals shall be filed with the corporate records or made a part of the minutes of the meetings.

(4) A majority of the directors present, whether or not a quorum is present, may adjourn any meeting to another time and place. If the meeting is adjourned for more than 24 hours, notice of any adjournment to another time or place shall be given prior to the time of the adjourned

meeting to the directors who were not present at the time of the adjournment.

(5) Meetings of the board may be held at any place within or without the state which has been designated in the notice of the meeting or, if not stated in the notice or if there is no notice, designated in the bylaws or by resolution of the board.

(6) Members of the board may participate in a meeting through use of conference telephone or similar communications equipment, as long as all members participating in the meeting can hear one another. Participation in a meeting pursuant to this subdivision constitutes presence in person at the meeting.

(7) A majority of the number of directors authorized in the articles or bylaws constitutes a quorum of the board for the transaction of business. The articles or bylaws may not provide that a quorum shall be less than one-fifth the number of directors authorized in the articles or bylaws, or less than two, whichever is larger, unless the number of directors authorized in the articles or bylaws is one, in which case one director constitutes a quorum.

(8) Subject to the provisions of Sections 7212, 7233, 7234, and subdivision (e) of Section 7237 and Section 5233, insofar as it is made applicable pursuant to Section 7238, every act or decision done or made by a majority of the directors present at a meeting duly held at which a quorum is present is the act of the board. The articles or bylaws may not provide that a lesser vote than a majority of the directors present at a meeting is the act of the board. A meeting at which a quorum is initially present may continue to transact business notwithstanding the withdrawal of directors, if any action taken is approved by at least a majority of the required quorum for the meeting, or any greater number as is required by this division, the articles or bylaws.

(b) Any action required or permitted to be taken by the board may be taken without a meeting, if all members of the board shall individually or collectively consent in writing to that action. The written consent or consents shall be filed with the minutes of the proceedings of the board. The action by written consent shall have the same force and effect as a unanimous vote of the directors. For the purposes of this section only, ''all members of the board'' does not include any ''interested director'' as defined in Section 5233, insofar as it is made applicable pursuant to Section 7238.

(c) The provisions of this section apply also to incorporators, to committees of the board, and to action by such incorporators or such committees mutatis mutandis.

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

SEC. 13. Section 9211 of the Corporations Code, as amended by Section 9 of Chapter 136 of the Statutes of 1997, is amended to read:

9211. (a) Unless otherwise provided in the articles or in the bylaws, all of the following apply:

(1) Meetings of the board may be called by the chair of the board or the president or any vice president or the secretary or any two directors.

(2) Regular meetings of the board may be held without notice if the time and place of the meetings are fixed by the bylaws or the board. Special meetings of the board shall be held upon four days' notice by first-class mail or 48 hours' notice delivered personally or by telephone, including a voice messaging system or other system or technology designed to record and communicate messages, telegraph, facsimile, electronic mail, or other electronic means. The articles or bylaws may not dispense with notice of a special meeting. A notice, or waiver of notice, need not specify the purpose of any regular or special meeting of the board.

(3) Notice of a meeting need not be given to a director who signed a waiver of notice or a written consent to holding the meeting or an approval of the minutes thereof, whether before or after the meeting, or who attends the meeting without protesting, prior thereto or at its commencement, the lack of notice to that director. These waivers, consents and approvals shall be filed with the corporate records or made a part of the minutes of the meetings.

(4) A majority of the directors present, whether or not a quorum is present, may adjourn any meeting to another time and place.

(5) Meetings of the board may be held at a place within or without the state that has been designated in the notice of the meeting or, if not stated in the notice or there is no notice, designated in the bylaws or by resolution of the board.

(6) Members of the board may participate in a meeting through use of conference telephone, electronic video screen communication, or other communications equipment. Participation in a meeting through use of conference telephone pursuant to this subdivision constitutes presence in person at that meeting as long as all members participating in the meeting are able to hear one another. Participation in a meeting through use of electronic video screen communication or other communications equipment, other than conference telephone, pursuant to this subdivision constitutes presence in person at that meeting, if all of the following apply:

(A) Each member participating in the meeting can communicate with all of the other members concurrently.

(B) Each member is provided the means of participating in all matters before the board, including, without limitation, the capacity to propose, or to interpose an objection to, a specific action to be taken by the corporation.

(C) The corporation adopts and implements some means of verifying both of the following:

(i) A person participating in the meeting is a director or other person entitled to participate in the board meeting.

(ii) All actions of or votes by the board are taken or cast only by the directors and not by persons who are not directors.

(7) A majority of the number of directors authorized in the articles or bylaws constitutes a quorum of the board for the transaction of business.

(8) An act or decision done or made by a majority of the directors present at a meeting duly held at which a quorum is present is the act of the board. The articles or bylaws may not provide that a lesser vote than a majority of the directors present at a meeting is the act of the board. A meeting at which a quorum is initially present may continue to transact business notwithstanding the withdrawal of directors, if any action taken is approved by at least a majority of the required quorum for that meeting, or a greater number as is required by this division, the articles or bylaws.

(b) An action required or permitted to be taken by the board may be taken without a meeting, if all members of the board shall individually or collectively consent in writing to that action. The written consent or consents shall be filed with the minutes of the proceedings of the board. The action by written consent shall have the same force and effect as the unanimous vote of the directors.

(c) This section applies also to incorporators, to committees of the board, and to action by those incorporators or committees mutatis mutandis.

(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. 14. Section 9211 of the Corporations Code, as amended by Section 10 of Chapter 136 of the Statutes of 1997, is amended to read:

9211. (a) Unless otherwise provided in the articles or in the bylaws:

(1) Meetings of the board may be called by the chairperson of the board or the president or any vice president or the secretary or any two directors.

(2) Regular meetings of the board may be held without notice if the time and place of the meetings are fixed by the bylaws or the board. Special meetings of the board shall be held upon four days' notice by first-class mail or 48 hours' notice delivered personally or by telephone, including a voice messaging system or other system or technology designed to record and communicate messages, telegraph, facsimile, electronic mail, or other electronic means. The articles or bylaws may not dispense with notice of a special meeting. A notice, or waiver of

notice, need not specify the purpose of any regular or special meeting of the board.

(3) Notice of a meeting need not be given to any director who signed a waiver of notice or a written consent to holding the meeting or an approval of the minutes thereof, whether before or after the meeting, or who attends the meeting without protesting, prior thereto or at its commencement, the lack of notice to that director. These waivers, consents and approvals shall be filed with the corporate records or made a part of the minutes of the meetings.

(4) A majority of the directors present, whether or not a quorum is present, may adjourn any meeting to another time and place.

(5) Meetings of the board may be held at any place within or without the state which has been designated in the notice of the meeting or, if not stated in the notice or there is no notice, designated in the bylaws or by resolution of the board.

(6) Members of the board may participate in a meeting through use of conference telephone or similar communications equipment, as long as all members participating in the meeting can hear one another. Participation in a meeting pursuant to this subdivision constitutes presence in person at the meeting.

(7) A majority of the number of directors authorized in the articles or bylaws constitutes a quorum of the board for the transaction of business.

(8) Every act or decision done or made by a majority of the directors present at a meeting duly held at which a quorum is present is the act of the board. The articles or bylaws may not provide that a lesser vote than a majority of the directors present at a meeting is the act of the board. A meeting at which a quorum is initially present may continue to transact business notwithstanding the withdrawal of directors, if any action taken is approved by at least a majority of the required quorum for the meeting, or any greater number as is required by this division, the articles, or bylaws.

(b) Any action required or permitted to be taken by the board may be taken without a meeting, if all members of the board shall individually or collectively consent in writing to that action. The written consent or consents shall be filed with the minutes of the proceedings of the board. The action by written consent shall have the same force and effect as the unanimous vote of the directors.

(c) This section applies also to incorporators, to committees of the board, and to action by the incorporators or the committees mutatis mutandis.

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

SEC. 15. Section 2106 of the Family Code is amended to read:

2106. Except as provided in subdivision (d) of Section 2105 or in Section 2110, absent good cause, no judgment shall be entered with

respect to the parties' property rights without each party, or the attorney for that party in this matter, having executed and served a copy of the final declaration of disclosure and current income and expense declaration. Each party, or his or her attorney, shall execute and file with the court a declaration signed under penalty of perjury stating that service of the final declaration of disclosure and current income and expense declaration was made on the other party or that service of the final declaration of disclosure has been waived pursuant to subdivision (d) of Section 2105 or in Section 2110.

SEC. 16. Section 3111 of the Family Code is amended to read:

3111. (a) In any contested proceeding involving child custody or visitation rights, the court may appoint a child custody evaluator to conduct a child custody evaluation in cases where the court determines it is in the best interests of the child. The child custody evaluation shall be conducted in accordance with the standards adopted by the Judicial Council pursuant to Section 3117, and all other standards adopted by the Judicial Council regarding child custody evaluations. If directed by the court, the court-appointed child custody evaluator shall file a written confidential report on his or her evaluation. At least 10 days before any hearing regarding custody of the child, the report shall be filed with the clerk of the court in which the custody hearing will be conducted and served on the parties or their attorneys, and any other counsel appointed for the child pursuant to Section 3150. The report may be considered by the court.

(b) The report shall not be made available other than as provided in subdivision (a).

(c) The report may be received in evidence on stipulation of all interested parties and is competent evidence as to all matters contained in the report.

SEC. 17. Section 7.6 of the Government Code is amended to read:

7.6. (a) If by law, any officer whose office is created by the California Constitution is made a member of a state board, commission, or committee, or of the governing body of any state agency or authority, the officer may designate a deputy of his or her office holding a position specified in subdivision (c) of Section 4 of Article VII of the California Constitution to act as the member in the constitutional officer's place and stead, to all intents and purposes as though the constitutional officer was personally present, including the right of the deputy to be counted in constituting a quorum, to participate in the proceedings of the board, commission, committee, or other governing body, and to vote upon any and all matters. The constitutional officer so designating a deputy shall be responsible for the acts of the deputy acting under the designation in the same manner and to the same extent that the constitutional officer is

responsible for the acts of the deputy performing his or her official duties as a deputy of the office of the constitutional officer.

(b) The Lieutenant Governor may designate any person in his or her office holding a position specified in subdivision (c) or (f) of Section 4 of Article VII of the California Constitution to act as a deputy for the purposes of this section only. However, the Lieutenant Governor may not appoint a person to act as a deputy for him or her at meetings of the Senate, or of the Regents of the University of California, or of the Trustees of the California State University.

(c) The Chief Justice of the California Supreme Court may designate a judge or employee of a state court or an employee of the Administrative Office of the Courts to act as a deputy for the purposes of this section.

(d) The Attorney General may also designate any person in his or her office holding a position specified in subdivision (m) of Section 4 of Article VII of the California Constitution to act as a deputy for the purpose of this section. However, no person designated by the Attorney General pursuant to this section to act as a member on any state board, commission, committee, or governing body of which the Attorney General is presiding officer shall act as presiding officer in his or her place.

(e) The Superintendent of Public Instruction may designate any person in his or her office holding a position specified in Section 2.1 of Article IX of the California Constitution to act as a deputy for the purposes of this section. However, the Superintendent of Public Instruction may not appoint a person to act as a deputy for him or her at meetings of the State Board of Education, of the Regents of the University of California, or of the Trustees of the California State University.

(f) Notwithstanding subdivisions (a) to (e), inclusive, not more than one officer subject to this section shall be represented by a deputy subject to this section at any meeting or session of the State Lands Commission.

SEC. 18. Section 20902.5 is added to the Government Code, to read:

20902.5. (a) Notwithstanding any other provision of this part, whenever the Chief Justice, by formal action, determines that because of an impending curtailment of, or change in the manner of performing, judicial branch services, the best interests of the state would be served by encouraging the retirement of judicial branch state employees from the Administrative Office of the Courts, the Supreme Court, the Courts of Appeal, or the Habeas Corpus Resource Center and that sufficient economies could be realized to offset any costs to the judicial branch resulting from this action, an additional two years of service shall be credited to the affected members, if both of the following conditions exists:

(1) The member is credited with five or more years of service and retires during a period not to exceed 120 days or less than 60 days commencing no sooner than the operative date of the formal action of the Chief Justice that shall specify the period.

(2) The Administrative Office of the Courts transmits to the retirement fund an amount determined by the board that is equal to the actuarial equivalent of the difference between the allowance the member receives after the receipt of service credit under this section and the amount the member would have received without that service credit. The transfer to the retirement fund shall be made in a manner and time period acceptable to the employer and the board with respect to all eligible members who retire during the specified period.

(b) As used in this section, ''member'' means a state employee who is employed in an organizational unit of the judicial branch designated by the Chief Justice in the formal action crediting the additional service credit.

(c) The amount of service credit shall be two years regardless of credited service. Any member who qualifies under this section shall, upon subsequent reentry to this system, forfeit the service credit acquired under this section.

(d) This section is not applicable to any member otherwise eligible, if the member receives any unemployment insurance payments arising out of employment with an employer subject to this part during a period extending one year beyond the operative date of the formal action of the Chief Justice or if the member is not eligible to retire without the additional credit available under this section.

SEC. 19. 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. Apportionment payments may not 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. 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.

(4) Notwithstanding any other provision of law, in order to promote statewide efficiency, the Judicial Council may authorize the direct

payment or reimbursement or both of actual costs from the Trial Court Trust Fund for trial court programs, contract costs, or legal and financial services to one or more participating courts upon appropriation of funding for these purposes in the annual Budget Act. Upon prior written approval of the Director of Finance, the Judicial Council may also authorize an increase in any reimbursements or direct payments in excess of the amount appropriated in the annual Budget Act. For any increases in reimbursements or direct payments within the fiscal year that exceed two hundred thousand dollars ($200,000), the Director of Finance shall provide notification in writing of any approval granted under this section, not less than 30 days prior to the effective date of that approval, to the chairperson of the committee in each house of the Legislature that considers appropriations, the chairpersons of the committees and the appropriate subcommittees in each house of the Legislature that consider the annual Budget Act, and the Chairperson of the Joint Legislative Budget Committee, or not sooner than whatever lesser time the Chairperson of the Joint Legislative Budget Committee, or his or her designee, may in each instance, determine. The direct payment or reimbursement of costs may be supported by the reduction of a participating court's allocation from the Trial Court Trust Fund to the extent that the court's expenditures for the program are reduced and the court is supported by the program. The Judicial Council shall provide the affected trail courts with quarterly reports on expenditures incurred as authorized by this subdivision. The Judicial Council shall establish procedures to provide for the administration of this paragraph in a way that promotes the effective, efficient, reliable, and accountable operation of the trial courts.

(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 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 may take action to change the amounts allocated to any of the funds described in subdivision (a), (b), (c), or (d).

(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. 20. Section 68087.1 is added to the Government Code, to read:

68087.1. The total amount collected pursuant to paragraph (1) of subdivision (c) of Section 68085 and the state surcharge imposed by Section 68087 may be rounded up to the nearest whole dollar. The clerk of the court shall cause the amount collected pursuant to this section to be transmitted to the Trial Court Trust Fund.

SEC. 21. Section 68203.1 of the Government Code is amended to read:

68203.1. (a) Operative January 2, 2002, the salary of the position of Chair of the Judicial Council and the position of a presiding judge of a superior court which has 15 or more judges, and the positions of the administrative presiding justices of the Courts of Appeal, shall be increased by that amount that is produced by multiplying the salary of each of these judicial offices by 4 percent and the salary for the position of a presiding judge of a superior court, that has four to 14 judges, shall be increased by the amount that is produced by multiplying the salary of that judicial office by 2 percent.

(b) Operative January 2, 2003, the salary for the position of a presiding judge of a superior court that has two or three judges, shall be increased by the amount that is produced by multiplying his or her salary by 2 percent.

(c) A judge or justice who no longer serves in the position of an administrative presiding justice or a presiding judge of a superior court shall receive only the salary in effect for judges or justices of his or her court.

SEC. 22. Section 69510 of the Government Code is repealed.

SEC. 23. Section 69510.5 of the Government Code is repealed.

SEC. 24. Section 69510.6 of the Government Code is repealed.

SEC. 25. Section 69645 is added to the Government Code, to read:

69645. (a) Notwithstanding any other provision of law, each trial court shall determine the number and location of sessions of the court. In making this determination, the court shall consider, among other factors, the impact of this provision on court employees pursuant to Section 71634, the availability and adequacy of facilities for holding the court session at the specific location, the efficiency and cost of holding the session at the specific location, any applicable security issues, and the convenience to the parties and the public served by the court.

(b) In appropriate circumstances, upon agreement of the presiding judges of the courts, and in the discretion of the court, the location of a session may be outside the county, except that the consent of the parties shall be necessary to the holding of a criminal jury trial outside the county. The venue of a case whose session is held outside the county pursuant to this section shall be deemed to be the home county of the court in which the matter was filed. Nothing in this section shall provide a party with the right to seek a change of venue unless otherwise provided by statute. No party shall have any right to request the court to exercise its discretion under this section.

(c) The Judicial Council may adopt rules that address an appropriate mechanism for sharing of expenses and resources between the court holding the session and the court hosting the session.

SEC. 26. Section 1328 of the Penal Code is amended to read:

1328. (a) A subpoena may be served by any person, except that the defendant may not serve a subpoena in the criminal action to which he or she is a party, but a peace officer shall serve in his or her county any subpoena delivered to him or her for service, either on the part of the people or of the defendant, and shall, without delay, make a written return of the service, subscribed by him or her, stating the time and place of service. The service is made by delivering a copy of the subpoena to the witness personally.

(b) (1) If service is to be made on a minor, service shall be made on the minor's parent, guardian, conservator, or similar fiduciary, or if one of them cannot be located with reasonable diligence, then service shall be made on any person having the care or control of the minor or with whom the minor resides or by whom the minor is employed, unless the parent, guardian, conservator, or fiduciary or other specified person is the defendant, and on the minor if the minor is 12 years of age or older. The person served shall have the obligation of producing the minor at the time and place designated in the subpoena. A willful failure to produce the minor is punishable as a contempt pursuant to Section 1218 of the Code of Civil Procedure. The person served shall be allowed the fees and expenses that are provided for subpoenaed witnesses.

(2) If the minor is alleged to come within the description of Section 300, 601, or 602 of the Welfare and Institutions Code, and the minor is not residing with a parent or guardian, regardless of the age of the minor, service shall also be made upon the designated agent for service of process at the county child welfare department or the probation department under whose jurisdiction the child has been placed.

(3) The court having jurisdiction of the case shall have the power to appoint a guardian ad litem to receive service of a subpoena of the child and shall have the power to produce the child ordered to court under this section.

(c) If any peace officer designated in Section 830 is required as a witness before any court or magistrate in any action or proceeding in connection with a matter regarding an event or transaction which he or she has perceived or investigated in the course of his or her duties, a criminal subpoena issued pursuant to this chapter requiring his or her attendance may be served either by delivering a copy to the peace officer personally or by delivering two copies to his or her immediate superior or agent designated by his or her immediate superior to receive the service or, in those counties where the local agencies have consented with the marshal's office or sheriff's office, where appropriate, to participate, by sending a copy by electronic means, including electronic mail, computer modem, facsimile, or other electronic means, to his or her immediate superior or agent designated by the immediate superior to receive the service. If the service is made by electronic means, the immediate superior or agency designated by his or her immediate superior shall acknowledge receipt of the subpoena by telephone or electronic means to the sender of origin. If service is made upon the immediate superior or agent designated by the immediate superior, the immediate superior or the agent shall deliver a copy of the subpoena to the peace officer as soon as possible and in no event later than a time which will enable the peace officer to comply with the subpoena.

(d) If the immediate superior or his or her designated agent upon whom service is attempted to be made knows he or she will be unable to deliver a copy of the subpoena to the peace officer within a time which will allow the peace officer to comply with the subpoena, the immediate superior or agent may refuse to accept service of process and is excused from any duty, liability, or penalty arising in connection with the service, upon notifying the server of that fact.

(e) If the immediate superior or his or her agent is tendered service of a subpoena less than five working days prior to the date of hearing, and he or she is not reasonably certain he or she can complete the service, he or she may refuse acceptance.

(f) If the immediate superior or agent upon whom service has been made, subsequently determines that he or she will be unable to deliver

a copy of the subpoena to the peace officer within a time which will allow the peace officer to comply with the subpoena, the immediate superior or agent shall notify the server or his or her office or agent not less than 48 hours prior to the hearing date indicated on the subpoena, and is thereby excused from any duty, liability, or penalty arising because of his or her failure to deliver a copy of the subpoena to the peace officer. The server, so notified, is therewith responsible for preparing the written return of service and for notifying the originator of the subpoena if required.

(g) Notwithstanding subdivision (c), in the case of peace officers employed by the California Highway Patrol, if service is made upon the immediate superior or upon an agent designated by the immediate superior of the peace officer, the immediate superior or the agent shall deliver a copy of the subpoena to the peace officer on the officer's first workday following acceptance of service of process. In this case, failure of the immediate superior or the designated agent to deliver the subpoena shall not constitute a defect in service.

SEC. 27. Section 1513.1 of the Probate Code is amended to read:

1513.1. (a) Each court or county shall assess (1) the parent, parents, or other person charged with the support and maintenance of the ward or proposed ward, and (2) the guardian, proposed guardian, or the estate of the ward or proposed ward, for court or county expenses incurred for any investigation or review conducted by the court investigator, probation officer, or domestic relations investigator The court may order reimbursement to the court or to the county in the amount of the assessment, unless the court finds that all or any part of the assessment would impose a hardship on the ward or the ward's estate. A county may waive any or all of an assessment against the guardianship on the basis of hardship. There shall be a rebuttable presumption that the assessment would impose a hardship if the ward is receiving Medi-Cal benefits.

(b) Any amount chargeable as state-mandated local costs incurred by a county for the cost of the investigation or review shall be reduced by any assessments actually collected by the county pursuant to subdivision (a) during that fiscal year.

SEC. 28. Section 1851 of the Probate Code is amended to read:

1851. (a) When court review is required, the court investigator shall visit the conservatee. The court investigator shall inform the conservatee personally that the conservatee is under a conservatorship and shall give the name of the conservator to the conservatee. The court investigator shall determine whether the conservatee wishes to petition the court for termination of the conservatorship, whether the conservatee is still in need of the conservatorship, whether the present conservator is acting in the best interests of the conservatee, and whether the conservatee is capable of completing an affidavit of voter registration. If the court has

made an order under Chapter 4 (commencing with Section 1870), the court investigator shall determine whether the present condition of the conservatee is such that the terms of the order should be modified or the order revoked.

(b) The findings of the court investigator, including the facts upon which the findings are based, shall be certified in writing to the court not less than 15 days prior to the date of review. A copy of the report shall be mailed to the conservator and to the attorneys of record for the conservator and conservatee at the same time it is certified to the court.

(c) In the case of a limited conservatee, the court investigator shall make a recommendation regarding the continuation or termination of the limited conservatorship.

(d) The court investigator may personally visit the conservator and other persons as may be necessary to determine whether the present conservator is acting in the best interests of the conservatee.

(e) The report required by this section shall be confidential and shall be made available only to parties, persons given notice of the petition who have requested the report or who have appeared in the proceeding, their attorneys, and the court. The court shall have discretion at any other time to release the report if it would serve the interests of the conservatee. The clerk of the court shall make provision for limiting disclosure of the report exclusively to persons entitled thereto under this section.

SEC. 29. Section 1851.5 of the Probate Code is amended to read:

1851.5. Each court shall assess each conservatee in the county for any investigation or review conducted by a court investigator with respect to that person. The court may order reimbursement to the court for the amount of the assessment, unless the court finds that all or any part of the assessment would impose a hardship on conservatee or the conservatee's estate. There shall be a rebuttable presumption that the assessment would impose a hardship if the conservatee is receiving Medi-Cal benefits.

SEC. 30. 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. The court may, upon its own motion or the filing of an affidavit by the person seeking the restraining order, find that the person to be restrained could not be served within the time required by law and to reissue an order previously issued and dissolved by the court for failure to serve the person to be restrained. The reissued order shall state on its face the date of expiration of the order. 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.

(*l*) Upon making any order for custody or visitation pursuant to this section, the court shall follow the procedures specified in subdivisions (c) and (d) of Section 6323 of the Family Code.

SEC. 31. Section 20 of this act shall only become operative and take effect if Assembly Bill 3000 or Senate Bill 1843, or both, of the 2001-02 Regular Session are enacted and become effective and add Section 68087 to the Government Code.

SEC. 32. 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 1009

An act to amend, repeal, and add Section 527.6 of the Code of Civil Procedure, to amend, repeal, and add Section 6222 of the Family Code, and to amend, repeal, and add Section 6103.2 of the Government Code, relating to harassment.

[Approved by Governor September 27, 2002. Filed with Secretary of State September 27, 2002.]

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

SECTION 1. Section 527.6 of the Code of Civil Procedure is amended to read:

527.6. (a) A person who has suffered harassment as defined in subdivision (b) may seek a temporary restraining order and an injunction prohibiting harassment as provided in this section.

(b) For the purposes of this section, ''harassment'' is unlawful violence, a credible threat of violence, or a knowing and willful course of conduct directed at a specific person that seriously alarms, annoys, or harasses the person, and that serves no legitimate purpose. The course of conduct must be such as would cause a reasonable person to suffer substantial emotional distress, and must actually cause substantial emotional distress to the plaintiff.

As used in this subdivision:

(1) ''Unlawful violence'' is any assault or battery, or stalking as prohibited in Section 646.9 of the Penal Code, but shall not include lawful acts of self-defense or defense of others.

(2) ''Credible threat of violence'' is a knowing and willful statement or course of conduct that would place a reasonable person in fear for his

or her safety, or the safety of his or her immediate family, and that serves no legitimate purpose.

(3) ''Course of conduct'' is a pattern of conduct composed of a series of acts over a period of time, however short, evidencing a continuity of purpose, including following or stalking an individual, making harassing telephone calls to an individual, or sending harassing correspondence to an individual by any means, including, but not limited to, the use of public or private mails, interoffice mail, fax, or computer e-mail. Constitutionally protected activity is not included within the meaning of ''course of conduct.''

(c) Upon filing a petition for an injunction under this section, the plaintiff may obtain a temporary restraining order in accordance with Section 527, except to the extent this section provides a rule that is inconsistent. A temporary restraining order may be issued with or without notice upon an affidavit that, to the satisfaction of the court, shows reasonable proof of harassment of the plaintiff by the defendant, and that great or irreparable harm would result to the plaintiff. In the discretion of the court, and on a showing of good cause, a temporary restraining order or injunction issued under this section may include other named family or household members who reside with the plaintiff. A temporary restraining order issued under this section shall remain in effect, at the court's discretion, for a period not to exceed 15 days, or, if the court extends the time for hearing under subdivision (d), not to exceed 22 days, unless otherwise modified or terminated by the court.

(d) Within 15 days, or, if good cause appears to the court, 22 days from the date the temporary restraining order is issued, a hearing shall be held on the petition for the injunction. The defendant may file a response that explains, excuses, justifies, or denies the alleged harassment or may file a cross-complaint under this section. At the hearing, the judge shall receive any testimony that is relevant, and may make an independent inquiry. If the judge finds by clear and convincing evidence that unlawful harassment exists, an injunction shall issue prohibiting the harassment. An injunction issued pursuant to this section shall have a duration of not more than three years. At any time within the three months before the expiration of the injunction, the plaintiff may apply for a renewal of the injunction by filing a new petition for an injunction under this section.

(e) This section does not preclude either party from representation by private counsel or from appearing on the party's own behalf.

(f) In a proceeding under this section if there are allegations or threats of domestic violence, a support person may accompany a party in court and, if the party is not represented by an attorney, may sit with the party at the table that is generally reserved for the party and the party's attorney. The support person is present to provide moral and emotional

support for a person who alleges he or she is a victim of domestic violence. The support person is not present as a legal adviser and may not provide legal advice. The support person may assist the person who alleges he or she is a victim of domestic violence in feeling more confident that he or she will not be injured or threatened by the other party during the proceedings if the person who alleges he or she is a victim of domestic violence and the other party are required to be present in close proximity. This subdivision does not preclude the court from exercising its discretion to remove the support person from the courtroom if the court believes the support person is prompting, swaying, or influencing the party assisted by the support person.

(g) Upon filing of a petition for an injunction under this section, the defendant shall be personally served with a copy of the petition, temporary restraining order, if any, and notice of hearing of the petition. Service shall be made at least five days before the hearing. The court may for good cause, on motion of the plaintiff or on its own motion, shorten the time for service on the defendant.

(h) The court shall order the plaintiff or the attorney for the plaintiff to deliver a copy of each temporary restraining order or injunction, or modification or termination thereof, granted under this section, by the close of the business day on which the order was granted, to the law enforcement agencies within the court's discretion as are requested by the plaintiff. Each appropriate law enforcement agency shall make available information as to the existence and current status of these orders to law enforcement officers responding to the scene of reported harassment.

An order issued under this section shall, on request of the plaintiff, be served on the defendant, whether or not the defendant has been taken into custody, by any law enforcement officer who is present at the scene of reported harassment involving the parties to the proceeding. The plaintiff shall provide the officer with an endorsed copy of the order and a proof of service that the officer shall complete and send to the issuing court.

Upon receiving information at the scene of an incident of harassment that a protective order has been issued under this section, or that a person who has been taken into custody is the subject of an order, if the protected person cannot produce a certified copy of the order, a law enforcement officer shall immediately attempt to verify the existence of the order.

If the law enforcement officer determines that a protective order has been issued, but not served, the officer shall immediately notify the defendant of the terms of the order and shall at that time also enforce the order. Verbal notice of the terms of the order shall constitute service of the order and is sufficient notice for the purposes of this section and for

the purposes of Section 273.6 and subdivision (g) of Section 12021 of the Penal Code.

(i) The prevailing party in any action brought under this section may be awarded court costs and attorney's fees, if any.

(j) Any willful disobedience of any temporary restraining order or injunction granted under this section is punishable pursuant to Section 273.6 of the Penal Code.

(k) This section does not apply to any action or proceeding governed by Title 1.6C (commencing with Section 1788) of the Civil Code or by Division 10 (commencing with Section 6200) of the Family Code. This section does not preclude a plaintiff's right to use other existing civil remedies.

(*l*) The Judicial Council shall promulgate forms and instructions therefor, and rules for service of process, scheduling of hearings, and any other matters required by this section. The petition and response forms shall be simple and concise, and their use by parties in actions brought pursuant to this section shall be mandatory.

(m) A temporary restraining order or injunction relating to harassment or 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. An order issued by a court pursuant to this section that was not issued on forms adopted by the Judicial Council and approved by the Department of Justice is not unenforceable for that reason.

(n) Information on any temporary restraining order or injunction relating to harassment or 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.

(o) There shall be no filing fee for a petition that alleges that a person has inflicted or threatened violence against the petitioner, or stalked the petitioner, or acted or spoke in any other manner that has placed the petitioner in reasonable fear of violence, and that seeks a protective or restraining order or injunction restraining stalking or future violence or threats of violence, in any action brought pursuant to this section. No fee shall be paid for a subpoena filed in connection with a petition alleging these acts. No fee shall be paid for filing a response to a petition alleging these acts.

(p) (1) Notwithstanding any other provision of law, upon the application of the petitioner there shall be no fee for the service of process of a protective order, restraining order, or injunction to be issued, if any of the following conditions apply:

(A) The protective order, restraining order, or injunction issued pursuant to this section is based upon stalking, as prohibited by Section 646.9 of the Penal Code.

(B) The protective order, restraining order, or injunction issued pursuant to this section is based upon a credible threat of violence resulting from a threat of sexual assault. As used in this subparagraph, ''sexual assault'' means the offenses enumerated in Section 1036.2 of the Evidence Code.

(C) The protective order, restraining order, or injunction is issued pursuant to Section 6222 of the Family Code, unless the applicant is eligible for a waiver of the payment of the fee for serving the order pursuant to subdivision (b) of that section.

(2) The Judicial Council shall prepare and develop application forms for applicants who wish to avail themselves of the services described in this subdivision.

(q) 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 527.6 is added to the Code of Civil Procedure, to read:

527.6. (a) A person who has suffered harassment as defined in subdivision (b) may seek a temporary restraining order and an injunction prohibiting harassment as provided in this section.

(b) For the purposes of this section, ''harassment'' is unlawful violence, a credible threat of violence, or a knowing and willful course of conduct directed at a specific person that seriously alarms, annoys, or harasses the person, and that serves no legitimate purpose. The course of conduct must be such as would cause a reasonable person to suffer substantial emotional distress, and must actually cause substantial emotional distress to the plaintiff.

As used in this subdivision:

(1) ''Unlawful violence'' is any assault or battery, or stalking as prohibited in Section 646.9 of the Penal Code, but shall not include lawful acts of self-defense or defense of others.

(2) ''Credible threat of violence'' is a knowing and willful statement or course of conduct that would place a reasonable person in fear for his or her safety, or the safety of his or her immediate family, and that serves no legitimate purpose.

(3) ''Course of conduct'' is a pattern of conduct composed of a series of acts over a period of time, however short, evidencing a continuity of purpose, including following or stalking an individual, making harassing telephone calls to an individual, or sending harassing correspondence to an individual by any means, including, but not limited to, the use of public or private mails, interoffice mail, fax, or

computer e-mail. Constitutionally protected activity is not included within the meaning of ''course of conduct.''

(c) Upon filing a petition for an injunction under this section, the plaintiff may obtain a temporary restraining order in accordance with Section 527, except to the extent this section provides a rule that is inconsistent. A temporary restraining order may be issued with or without notice upon an affidavit that, to the satisfaction of the court, shows reasonable proof of harassment of the plaintiff by the defendant, and that great or irreparable harm would result to the plaintiff. In the discretion of the court, and on a showing of good cause, a temporary restraining order issued under this section may include other named family or household members who reside with the plaintiff. A temporary restraining order issued under this section shall remain in effect, at the court's discretion, for a period not to exceed 15 days, or, if the court extends the time for hearing under subdivision (d), not to exceed 22 days, unless otherwise modified or terminated by the court.

(d) Within 15 days, or, if good cause appears to the court, 22 days from the date the temporary restraining order is issued, a hearing shall be held on the petition for the injunction. The defendant may file a response that explains, excuses, justifies, or denies the alleged harassment or may file a cross-complaint under this section. At the hearing, the judge shall receive any testimony that is relevant, and may make an independent inquiry. If the judge finds by clear and convincing evidence that unlawful harassment exists, an injunction shall issue prohibiting the harassment. An injunction issued pursuant to this section shall have a duration of not more than three years. At any time within the three months before the expiration of the injunction, the plaintiff may apply for a renewal of the injunction by filing a new petition for an injunction under this section.

(e) This section does not preclude either party from representation by private counsel or from appearing on the party's own behalf.

(f) In a proceeding under this section where there are allegations or threats of domestic violence, a support person may accompany a party in court and, where the party is not represented by an attorney, may sit with the party at the table that is generally reserved for the party and the party's attorney. The support person is present to provide moral and emotional support for a person who alleges he or she is a victim of domestic violence. The support person is not present as a legal adviser and shall not give legal advice. The support person shall assist the person who alleges he or she is a victim of domestic violence in feeling more confident that he or she will not be injured or threatened by the other party during the proceedings where the person who alleges he or she is a victim of domestic violence and the other party must be present in close proximity. This subdivision does not preclude the court from exercising

its discretion to remove the support person from the courtroom if the court believes the support person is prompting, swaying, or influencing the party assisted by the support person.

(g) Upon filing of a petition for an injunction under this section, the defendant shall be personally served with a copy of the petition, temporary restraining order, if any, and notice of hearing of the petition. Service shall be made at least five days before the hearing. The court may for good cause, on motion of the plaintiff or on its own motion, shorten the time for service on the defendant.

(h) The court shall order the plaintiff or the attorney for the plaintiff to deliver a copy of each temporary restraining order or injunction, or modification or termination thereof, granted under this section, by the close of the business day on which the order was granted, to the law enforcement agencies within the court's discretion as are requested by the plaintiff. Each appropriate law enforcement agency shall make available information as to the existence and current status of these orders to law enforcement officers responding to the scene of reported harassment.

An order issued under this section shall, on request of the plaintiff, be served on the defendant, whether or not the defendant has been taken into custody, by any law enforcement officer who is present at the scene of reported harassment involving the parties to the proceeding. The plaintiff shall provide the officer with an endorsed copy of the order and a proof of service that the officer shall complete and send to the issuing court.

Upon receiving information at the scene of an incident of harassment that a protective order has been issued under this section, or that a person who has been taken into custody is the subject of an order, if the protected person cannot produce a certified copy of the order, a law enforcement officer shall immediately attempt to verify the existence of the order.

If the law enforcement officer determines that a protective order has been issued, but not served, the officer shall immediately notify the defendant of the terms of the order and shall at that time also enforce the order. Verbal notice of the terms of the order shall constitute service of the order and is sufficient notice for the purposes of this section and for the purposes of Section 273.6 and subdivision (g) of Section 12021 of the Penal Code.

(i) The prevailing party in any action brought under this section may be awarded court costs and attorney's fees, if any.

(j) Any willful disobedience of any temporary restraining order or injunction granted under this section is punishable pursuant to Section 273.6 of the Penal Code.

(k) This section does not apply to any action or proceeding covered by Title 1.6C (commencing with Section 1788) of the Civil Code or by

Division 10 (commencing with Section 6200) of the Family Code. This section does not preclude a plaintiff from using other existing civil remedies.

(*l*) The Judicial Council shall promulgate forms and instructions therefor, and rules for service of process, scheduling of hearings, and any other matters required by this section. The petition and response forms shall be simple and concise, and their use by parties in actions brought pursuant to this section shall be mandatory.

(m) A temporary restraining order or injunction relating to harassment or 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.

(n) Information on any temporary restraining order or injunction relating to harassment or 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.

(o) There is no filing fee for a petition that alleges that a person has inflicted or threatened violence against the petitioner, or stalked the petitioner, or acted or spoke in any other manner that has placed the petitioner in reasonable fear of violence, and that seeks a protective or restraining order or injunction restraining stalking or future violence or threats of violence, in any action brought pursuant to this section. No fee shall be paid for filing a response to a petition alleging these acts.

(p) This section shall become operative January 1, 2007.

SEC. 3. Section 6222 of the Family Code is amended to read:

6222. (a) There is no filing fee for an application, a responsive pleading, or an order to show cause that seeks to obtain, modify, or enforce a protective order or other order authorized by this division if the request for the other order is necessary to obtain or give effect to a protective order. There is no fee for a subpoena filed in connection with that application, responsive pleading, or order to show cause.

(b) Fees otherwise payable by a petitioner to a law enforcement agency for serving an order issued under this division may be waived in any case in which the petitioner has requested a fee waiver on the initiating petition and has filed a declaration that demonstrates, to the satisfaction of the court, the financial need of the petitioner for the fee waiver. If the petitioner is not eligible for the fee waiver pursuant to this subdivision, he or she may be eligible pursuant to paragraph (1) of subdivision (p) of Section 527.6 of the Code of Civil Procedure.

(c) The declaration required by subdivision (b) shall be on one of the following forms:

(1) The form formulated and adopted by the Judicial Council for litigants proceeding in forma pauperis pursuant to Section 68511.3 of the Government Code, but the petitioner is not subject to any other requirements of litigants proceeding in forma pauperis.

(2) Any other form that the Judicial Council may adopt for this purpose pursuant to Section 6226.

(d) In conjunction with a hearing pursuant to this division, the court may make an order for the waiver of fees otherwise payable by the petitioner to a law enforcement agency for serving an order issued under this division.

(e) This section shall remain in effect only until January 1, 2007, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2007, deletes or extends that date.

SEC. 4. Section 6222 is added to the Family Code, to read:

6222. (a) There is no filing fee for an application, a responsive pleading, or an order to show cause that seeks to obtain, modify, or enforce a protective order or other order authorized by this division when the request for the other order is necessary to obtain or give effect to a protective order.

(b) Fees otherwise payable by a petitioner to a law enforcement agency for serving an order issued under this division may be waived in any case in which the petitioner has requested a fee waiver on the initiating petition and has filed a declaration that demonstrates, to the satisfaction of the court, the financial need of the petitioner for the fee waiver.

(c) The declaration required by subdivision (b) shall be on one of the following forms:

(1) The form formulated and adopted by the Judicial Council for litigants proceeding in forma pauperis pursuant to Section 68511.3 of the Government Code, but the petitioner is not subject to any other requirements of litigants proceeding in forma pauperis.

(2) Any other form that the Judicial Council may adopt for this purpose pursuant to Section 6226.

(d) In conjunction with a hearing pursuant to this division, the court may make an order for the waiver of fees otherwise payable by the petitioner to a law enforcement agency for serving an order issued under this division.

(e) This section shall become operative January 1, 2007.

SEC. 5. Section 6103.2 of the Government Code is amended to read:

6103.2. (a) Section 6103 does not apply to any fee or charge or expense for official services rendered by a sheriff or marshal in connection with the levy of writs of attachment, execution, possession,

or sale. The fee, charge, or expense may be advanced to the sheriff or marshal, as otherwise required by law.

(b) (1) Notwithstanding Section 6103, the sheriff or marshal, in connection with the service of process or notices, may require that all fees which a public agency, or any person or entity, is required to pay under provisions of law other than this section, be prepaid by a public agency named in Section 6103, or by any person or entity, prior to the performance of any official act. This authority to require prepayment shall include fees governed by Section 6103.5.

(2) This subdivision does not apply to the service of process or notices in any action by the district attorney's office for the establishment or enforcement of a child support obligation.

(3) This subdivision does not apply to a particular jurisdiction unless the sheriff or marshal, as the case may be, imposes the requirement of prepayment upon public agencies and upon all persons or entities within the private sector.

(4) The requirement for prepayment of a fee deposit does not apply to the orders or injunctions described in paragraph (1) of subdivision (p) of Section 527.6 of the Code of Civil Procedure. However, a sheriff, marshal, or constable may submit a billing to the superior court for payment of fees in the manner prescribed by the Judicial Council. The fees for service, cancellation of service, and making a not found return may not exceed the amounts provided in Sections 26721, 26736, and 26738, respectively, and are subject to the provisions of Section 26731.

(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. 6. Section 6103.2 is added to the Government Code, to read:

6103.2. (a) Section 6103 does not apply to any fee or charge or expense for official services rendered by a sheriff or marshal in connection with the levy of writs of attachment, execution, possession, or sale. The fee, charge, or expense may be advanced to the sheriff or marshal, as otherwise required by law.

(b) (1) Notwithstanding Section 6103, the sheriff or marshal, in connection with the service of process or notices, may require that all fees which a public agency, or any person or entity, is required to pay under provisions of law other than this section, be prepaid by a public agency named in Section 6103, or by any person or entity, prior to the performance of any official act. This authority to require prepayment shall include fees governed by Section 6103.5.

(2) This subdivision does not apply to the service of process or notices in any action by the district attorney's office for the establishment or enforcement of a child support obligation.

(3) This subdivision does not apply to a particular jurisdiction unless the sheriff or marshal, as the case may be, imposes the requirement of prepayment upon public agencies and upon all persons or entities within the private sector.

(c) This section shall become operative January 1, 2007.

CHAPTER 1010

An act to add Article 8.5 (commencing with Section 69920) to Chapter 5 of Title 8 of, and to repeal Sections 26603 and 77212.5 of, the Government Code, relating to judicial security.

[Approved by Governor September 27, 2002. Filed with Secretary of State September 27, 2002.]

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

SECTION 1. Article 8.5 (commencing with Section 69920) is added to Chapter 5 of Title 8 of the Government Code, to read:

Article 8.5. Superior Court Security

69920. This article shall be known and may be cited as the Superior Court Law Enforcement Act of 2002.

69921. For purposes of this article:

(a) ''Contract law enforcement template'' means a document that is contained in the Administrative Office of the Courts' financial policies and procedures manual that accounts for and further defines allowable costs, as described in paragraphs (3) to (6), inclusive, of subdivision (a) of Section 69927.

(b) ''Court attendant'' means a nonarmed, nonlaw enforcement employee of the superior court who performs those functions specified by the court, except those functions that may only be performed by armed and sworn personnel. A court attendant is not a peace officer or a public safety officer.

(c) ''Court security plan'' means a plan that is provided by the superior court to the Administrative Office of the Courts that includes a law enforcement security plan and all other court security matters.

(d) ''Law enforcement security plan'' means a plan that is provided by a sheriff or marshal that includes policies and procedures for providing public safety and law enforcement services to the court.

(e) ''Superior court law enforcement functions'' means all of the following:

(1) Bailiff functions, as defined in Sections 830.1 and 830.36 of the Penal Code, in criminal and noncriminal actions, including, but not limited to, attending courts.

(2) Taking charge of a jury, as provided in Sections 613 and 614 of the Code of Civil Procedure.

(3) Patrolling hallways and other areas within court facilities.

(4) Overseeing prisoners in holding cells within court facilities.

(5) Escorting prisoners in holding cells within court facilities.

(6) Providing security screening within court facilities.

(7) Providing enhanced security for bench officers and court personnel, as agreed upon by the court and the sheriff or marshal.

69921.5. The duties of the presiding judge of each superior court shall include the authority to contract, subject to available funding, with a sheriff or marshal, for the necessary level of law enforcement services in the courts.

69922. Except as otherwise provided by law, whenever required, the sheriff shall attend all superior court held within his or her county. A sheriff shall attend a noncriminal, nondelinquency action, however, only if the presiding judge or his or her designee makes a determination that the attendance of the sheriff at that action is necessary for reasons of public safety. The court may use court attendants in courtrooms hearing those noncriminal, nondelinquency actions. Notwithstanding any other provision of law, the presiding judge or his or her designee may provide that a court attendant take charge of a jury, as provided in Sections 613 and 614 of the Code of Civil Procedure. The sheriff shall obey all lawful orders and directions of all courts held within his or her county.

69925. On and after July 1, 2003, the sheriff or marshal, in conjunction with the presiding judge, shall develop an annual or multiyear comprehensive court security plan that includes the mutually agreed upon law enforcement security plan to be utilized by the court. The Judicial Council shall provide for the subject areas to be addressed in the plan and specify the most efficient practices for providing court security services. The Judicial Council shall establish a process for the review of court security plans by the Judicial Council in the California Rules of Court. The Judicial Council shall annually submit to the Senate Judiciary Committee and Assembly Judiciary Committee a report summarizing the court security plans reviewed by the Judicial Council, including, but not limited to, a description of each plan, the cost involved, and whether each plan complies with the rules for the most efficient practices for providing court security services.

69926. (a) This section applies to the superior court and the sheriff or marshal's department in those counties in which either of the following apply:

(1) The sheriff's department was otherwise required by law to provide court security services on and after July 1, 1998.

(2) Court security was provided by the marshal's office on and after July 1, 1998, the marshal's office was subsequently abolished and succeeded by the sheriff's department, and the successor sheriff's department is required to provide court security services as successor to the marshal.

(b) The superior court and the sheriff or marshal shall enter into an annual or multiyear memorandum of understanding specifying the agreed upon level of court security services, cost of services, and terms of payment.

(c) The sheriff or marshal shall provide information as identified in the contract law enforcement template by April 30 of each year to the superior court in that county, specifying the nature, extent, and basis of the costs, including negotiated or projected salary increases of court law enforcement services that the sheriff proposes to include in the budget of the court security program for the following state budget year. Actual court security allocations shall be subject to the approval of the Judicial Council and the funding provided by the Legislature. It is the intent of the Legislature that proposed court security expenditures submitted by the Judicial Council to the Department of Finance for inclusion in the Governor's Budget shall be as defined in the contract law enforcement template.

(d) If the superior court and the sheriff or marshal are unwilling or unable to enter into an agreement pursuant to this section on or before August 1 of any fiscal year, the court or sheriff or marshal may request the continuation of negotiations between the superior court and the sheriff or marshal for a period of 45 days with mediation assistance, during which time the previous law enforcement services agreement shall remain in effect. Mutually agreed upon mediation assistance shall be determined by the Administrative Director of the Courts and the president of the California State Sheriffs' Association.

69927. (a) It is the intent of the Legislature in enacting this section to develop a definition of the court security component of court operations that modifies Function 8 of Rule 810 of the California Rules of Court in a manner that will standardize billing and accounting practices and court security plans, and identify allowable law enforcement security costs after the operative date of this article. It is not the intent of the Legislature to increase or decrease the responsibility of a county for the cost of court operations, as defined in Section 77003 or Rule 810 of the California Rules of Court, as it read on July 1, 1996, for court security services provided prior to January 1, 2003. It is the intent of the Legislature that a sheriff or marshal's court law enforcement budget may not be reduced as a result of this article. Any new court

security costs permitted by this article shall not be operative unless the funding is provided by the Legislature.

(1) The Judicial Council shall adopt a rule establishing a working group on court security. The group shall consist of six representatives from the judicial branch of government, as selected by the Administrative Director of the Courts, two representatives of the counties, as selected by the California State Association of Counties, and three representatives of the county sheriffs, as selected by the California State Sheriffs' Association. It is the intent of the Legislature that this working group may recommend modifications only to the template used to determine that the security costs submitted by the courts to the Administrative Office of the Courts are permitted pursuant to this article. The template shall be a part of the trial court's financial policies and procedures manual and used in place of the definition of law enforcement costs in Function 8 of Rule 810 of the California Rules of Court. If the working group determines that there is a need to make recommendations to the template that specifically involve law enforcement or security personnel in courtrooms or court detention facilities, the membership of the working group shall change and consist of six representatives from the judicial branch of government selected by the Administrative Director of the Courts, two representatives of the counties selected by the California State Association of Counties, two representatives of the county sheriffs selected by the California State Sheriffs' Association, and two representatives of labor selected by the California Coalition of Law Enforcement Associations.

(2) When mutually agreed to by the courts, county, and the sheriff or marshal in any county, the costs of perimeter security in any building that the court shares with any county agency, excluding the sheriff or marshal's department, shall be apportioned based on the amount of the total noncommon square feet of space occupied by the court and any county agency.

(3) ''Allowable costs for equipment, services, and supplies,'' as defined in the contract law enforcement template, means the purchase and maintenance of security screening equipment and the cost of ammunition, batons, bulletproof vests, handcuffs, holsters, leather gear, chemical spray and holders, radios, radio chargers and holders, uniforms, and one primary duty sidearm.

(4) ''Allowable costs for professional support staff for court security operations,'' as defined in the contract law enforcement template, means the salary, benefits, and overtime of staff performing support functions that, at a minimum, provide payroll, human resources, information systems, accounting, or budgeting.

Allowable costs for professional support staff for court security operations in each trial court shall not exceed 6 percent of total allowable

costs for law enforcement security personnel services in courts whose total allowable costs for law enforcement security personnel services is less than ten million dollars ($10,000,000) per year. Allowable costs for professional support staff for court security operations for each trial court shall not exceed 4 percent of total allowable costs for law enforcement security personnel services in courts whose total allowable costs for law enforcement security personnel services exceeds ten million dollars ($10,000,000) per year. Additional costs for services related to court-mandated special project support, beyond those provided for in the contract law enforcement template, are allowable only when negotiated by the trial court and the court law enforcement provider. Allowable costs shall not exceed actual costs of providing support staff services for law enforcement security personnel services.

The working group established pursuant to paragraph (1) of subdivision (a) of Section 69927 may periodically recommend changes to the limit for allowable costs for professional support staff for court security operations based on surveys of actual expenditures incurred by trial courts and the court law enforcement provider in the provision of law enforcement security personnel services. Limits for allowable costs as stated in this section shall remain in effect until changes are recommended by the working group and adopted by the Judicial Council.

(5) ''Allowable costs for security personnel services,'' as defined in the contract law enforcement template, means the salary and benefits of an employee, including, but not limited to, county health and welfare, county incentive payments, deferred compensation plan costs, FICA or Medicare, general liability premium costs, leave balance payout commensurate with an employee's time in court security services as a proportion of total service credit earned after January 1, 1998, premium pay, retirement, state disability insurance, unemployment insurance costs, worker's compensation paid to an employee in lieu of salary, worker's compensation premiums of supervisory security personnel through the rank of captain, line personnel, inclusive of deputies, court attendants, contractual law enforcement services, prisoner escorts within the courts, and weapons screening personnel, court required training, and overtime and related benefits of law enforcement supervisory and line personnel.

(A) The Administrative Office of the Courts shall use the actual salary and benefits costs approved for court law enforcement personnel as of June 30 of each year in determining the funding request that will be presented to the Department of Finance.

(B) Courts and court security providers shall manage their resources to minimize the use of overtime.

(6) ''Allowable costs for vehicle use for court security needs,'' as defined in the contract law enforcement template, means the per mile recovery cost for vehicles used in rendering court law enforcement services, exclusive of prisoner or detainee transport to or from court. The standard mileage rate applied against the miles driven for the above shall be the standard reimbursable mileage rate in effect for judicial officers and employees at the time of contract development.

(b) Nothing in this article may increase a county's obligation or require any county to assume the responsibility for a cost of any service that was defined as a court operation cost, as defined by Function 8 of Rule 810 of the California Rules of Court, as it read on July 1, 1996, or that meets the definition of any new law enforcement component developed pursuant to this article.

SEC. 2. Section 26603 of the Government Code is repealed.

SEC. 3. Section 77212.5 of the Government Code is repealed.

SEC. 4. 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.

CHAPTER 1011

An act to amend Sections 2531, 2534.2, 2570.5, 2570.16, 2570.20, 2770.11, 3330, and 3456 of, and to add Section 2751 to, the Business and Professions Code, and to amend Section 3 of Chapter 859 of the Statutes of 2001, relating to business and professions, and making an appropriation therefor.

[Approved by Governor September 27, 2002. Filed with Secretary of State September 27, 2002.]

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

SECTION 1. Section 2531 of the Business and Professions Code is amended to read:

2531. There is in the Department of Consumer Affairs a Speech-Language Pathology and Audiology Board in which the enforcement and administration of this chapter is vested. The Speech-Language Pathology and Audiology Board shall consist of nine members, three of whom shall be public members.

This section shall become inoperative on July 1, 2005, and, as of January 1, 2006, is repealed, unless a later enacted statute, that becomes effective on or before January 1, 2006, deletes or extends the inoperative and repeal dates.

SEC. 2. Section 2534.2 of the Business and Professions Code is amended to read:

2534.2. The amount of the fees prescribed by this chapter is that established by the following schedule:

(a) The application fee and renewal fee shall be established by the board in an amount that does not exceed one hundred fifty dollars ($150) but is sufficient to support the functions of the board that relate to the functions authorized by this chapter.

(b) The delinquency fee shall be twenty-five dollars ($25).

(c) The reexamination fee shall be established by the board in an amount that does not exceed seventy-five dollars ($75).

(d) The fee for registration of an aide shall be established by the board in an amount that does not exceed thirty dollars ($30).

(e) A fee to be set by the board of not more than one hundred dollars ($100) shall be charged for each application for approval as a speech-language pathology assistant.

(f) A fee of one hundred fifty dollars ($150) shall be charged for the issuance of and for the renewal of each approval as a speech-language pathology assistant, unless a lower fee is established by the board.

(g) The duplicate wall certificate fee is twenty-five dollars ($25).

(h) The duplicate renewal receipt fee is twenty-five dollars ($25).

(i) The application fee and renewal fee for a temporary license is thirty dollars ($30).

(j) The fee for issuance of a license status and history certification letter shall be established by the board in an amount not to exceed twenty-five dollars ($25).

SEC. 3. Section 2570.5 of the Business and Professions Code is amended to read:

2570.5. (a) A limited permit may be granted to any person who has completed the education and experience requirements of this chapter.

(b) A person who meets the qualifications to be admitted to the examination for licensure or certification under this chapter and is waiting to take the first available examination or awaiting the announcement of the results of the examination, according to the application requirements for a limited permit, may practice as an occupational therapist or as an occupational therapy assistant under the direction and appropriate supervision of an occupational therapist duly licensed under this chapter. If that person fails to qualify for or pass the first announced examination, all privileges under this section shall

automatically cease upon due notice to the applicant of that failure and may not be renewed.

(c) A limited permit shall be subject to other requirements set forth in rules adopted by the board.

SEC. 4. Section 2570.16 of the Business and Professions Code is amended to read:

2570.16. Initial license or certification and renewal fees shall be established by the board in an amount that does not exceed a ceiling of one hundred fifty dollars ($150) per year. The board shall establish the following additional fees:

(a) An application fee not to exceed fifty dollars ($50).

(b) A late renewal fee as provided for in Section 2570.10.

(c) A limited permit fee.

(d) A fee to collect fingerprints for criminal history record checks.

SEC. 5. Section 2570.20 of the Business and Professions Code is amended to read:

2570.20. (a) The board shall administer, coordinate, and enforce the provisions of this chapter, evaluate the qualifications, and approve the examinations for licensure under this chapter.

(b) The board shall adopt rules in accordance with the Administrative Procedure Act relating to professional conduct to carry out the purpose of this chapter, including, but not limited to, rules relating to professional licensure or certification and to the establishment of ethical standards of practice for persons holding a license to practice occupational therapy and for persons certified to assist in the practice of occupational therapy in this state.

(c) Proceedings under this chapter shall be conducted in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

SEC. 6. Section 2751 is added to the Business and Professions Code, to read:

2751. (a) Notwithstanding any other law, the board may, in its discretion, accept the surrender of a license through a stipulated agreement in the absence of a pleading when the ability of a registered nurse to practice nursing safely is impaired due to mental or physical illness.

(b) This alternative proceeding shall apply only to cases that would otherwise have been processed pursuant to Section 820.

(c) Until the time that the licensee signs the stipulated agreement for license surrender, he or she may elect to have the disciplinary process conducted pursuant to Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

(d) The stipulated agreement in this alternative proceeding shall specify that:

(1) The license surrender shall be public information and shall be considered a disciplinary action.

(2) The licensee may petition the board for reinstatement after a period of not less than one year after the effective date of the decision.

(3) Any reinstatement proceeding shall be conducted pursuant to Section 2760.1.

(4) Upon seeking reinstatement, it is the responsibility of the former licensee to submit competent evidence of the ability to safely and competently practice as a registered nurse.

SEC. 7. Section 2770.11 of the Business and Professions Code is amended to read:

2770.11. (a) Each registered nurse who requests participation in a diversion program shall agree to cooperate with the rehabilitation program designed by a committee. Any failure to comply with the provisions of a rehabilitation program may result in termination of the registered nurse's participation in a program. The name and license number of a registered nurse who is terminated for any reason, other than successful completion, shall be reported to the board's enforcement program.

(b) If a committee determines that a registered nurse, who is denied admission into the program or terminated from the program, presents a threat to the public or his or her own health and safety, the committee shall report the name and license number, along with a copy of all diversion records for that registered nurse, to the board's enforcement program. The board may use any of the records it receives under this subdivision in any disciplinary proceeding.

SEC. 8. Section 3330 of the Business and Professions Code is amended to read:

3330. The bureau may employ the personnel necessary to administer this chapter and may incur other expenses as are necessary for the administration of this chapter. All inspections or investigations made pursuant to this chapter shall be made by personnel from the bureau or from the Division of Investigation of the department.

SEC. 9. Section 3456 of the Business and Professions Code is amended to read:

3456. The amount of fees and penalties prescribed by this chapter shall be those set forth in this section unless a lower fee is fixed by the bureau:

(a) The fee for applicants applying for the first time for a license is seventy-five dollars ($75), which shall not be refunded, except to applicants who are found to be ineligible to take an examination for a license. Those applicants are entitled to a refund of fifty dollars ($50).

(b) The fees for taking or retaking the written and practical examinations shall be amounts fixed by the bureau, which shall be equal

to the actual cost of preparing, grading, analyzing, and administering the examinations.

(c) The initial temporary license fee is one hundred dollars ($100). The fee for renewal of a temporary license is one hundred dollars ($100) for each renewal.

(d) The initial permanent license fee is two hundred eighty dollars ($280). The fee for renewal of a permanent license is not more than two hundred eighty dollars ($280) for each renewal.

(e) The initial branch office license fee is twenty-five dollars ($25). The fee for renewal of a branch office license is twenty-five dollars ($25) for each renewal.

(f) The delinquency fee is twenty-five dollars ($25).

(g) The fee for issuance of a replacement license is twenty-five dollars ($25).

(h) The continuing education course approval application fee is fifty dollars ($50). The fee for a continuing education course transcript is ten dollars ($10).

(i) The fee for official certification of licensure is fifteen dollars ($15). The fee for a license confirmation letter is ten dollars ($10).

SEC. 10. Section 3 of Chapter 859 of the Statutes of 2001 is amended to read:

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 December 31, 2003. 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.

CHAPTER 1012

An act to amend Sections 473.15, 473.6, 805, 805.7, 2920, 2933, 4800, 4804.5, 4990.1, 4990.8, 5510, 5517, 5620, 5621, 5622, 6710, 6714, 7810, 7815.5, 8000, 8005, 8520, and 8528 of the Business and Professions Code, relating to professions and vocations, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 27, 2002. Filed with Secretary of State September 27, 2002.]

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

SECTION 1. Section 473.15 of the Business and Professions Code is amended to read:

473.15. (a) The Joint Legislative Sunset Review Committee established pursuant to Section 473 shall review the following boards established by initiative measures, as provided in this section:

(1) The State Board of Chiropractic Examiners established by an initiative measure approved by electors November 7, 1922.

(2) The Osteopathic Medical Board of California established by an initiative measure approved June 2, 1913, and acts amendatory thereto approved by electors November 7, 1922.

(b) The Osteopathic Medical Board of California shall prepare an analysis and submit a report as described in subdivisions (a) to (e), inclusive, of Section 473.2, to the Joint Legislative Sunset Review Committee on or before September 1, 2004.

(c) The State Board of Chiropractic Examiners shall prepare an analysis and submit a report as described in subdivisions (a) to (e), inclusive, of Section 473.2, to the Joint Legislative Sunset Review Committee on or before September 1, 2001.

(d) The Joint Legislative Sunset Review Committee shall, during the interim recess of 2004 for the Osteopathic Medical Board of California, and during the interim recess of 2001 for the State Board of Chiropractic Examiners, hold public hearings to receive testimony from the Director of Consumer Affairs, the board involved, the public, and the regulated industry. In that hearing, each board shall be prepared to demonstrate a compelling public need for the continued existence of the board or regulatory program, and that its licensing function is the least restrictive regulation consistent with the public health, safety, and welfare.

(e) The Joint Legislative Sunset Review Committee shall evaluate and make determinations pursuant to Section 473.4 and shall report its findings and recommendations to the department as provided in Section 473.5.

(f) In the exercise of its inherent power to make investigations and ascertain facts to formulate public policy and determine the necessity and expediency of contemplated legislation for the protection of the public health, safety, and welfare, it is the intent of the Legislature that the State Board of Chiropractic Examiners and the Osteopathic Medical Board of California be reviewed pursuant to this section.

(g) It is not the intent of the Legislature in requiring a review under this section to amend the initiative measures that established the State Board of Chiropractic Examiners or the Osteopathic Medical Board of California.

SEC. 1.5. Section 473.15 of the Business and Professions Code is amended to read:

473.15. (a) The Joint Legislative Sunset Review Committee established pursuant to Section 473 shall review the following boards established by initiative measures, as provided in this section:

(1) The State Board of Chiropractic Examiners established by an initiative measure approved by electors November 7, 1922.

(2) The Osteopathic Medical Board of California established by an initiative measure approved June 2, 1913, and acts amendatory thereto approved by electors November 7, 1922.

(b) The Osteopathic Medical Board of California shall prepare an analysis and submit a report as described in subdivisions (a) to (e), inclusive, of Section 473.2, to the Joint Legislative Sunset Review Committee on or before September 1, 2004.

(c) The State Board of Chiropractic Examiners shall prepare an analysis and submit a report as described in subdivisions (a) to (e), inclusive, of Section 473.2, to the Joint Legislative Sunset Review Committee on or before September 1, 2005.

(d) The Joint Legislative Sunset Review Committee shall, during the interim recess of 2004 for the Osteopathic Medical Board of California, and during the interim recess of 2005 for the State Board of Chiropractic

Examiners, hold public hearings to receive testimony from the Director of Consumer Affairs, the board involved, the public, and the regulated industry. In that hearing, each board shall be prepared to demonstrate a compelling public need for the continued existence of the board or regulatory program, and that its licensing function is the least restrictive regulation consistent with the public health, safety, and welfare.

(e) The Joint Legislative Sunset Review Committee shall evaluate and make determinations pursuant to Section 473.4 and shall report its findings and recommendations to the department as provided in Section 473.5.

(f) In the exercise of its inherent power to make investigations and ascertain facts to formulate public policy and determine the necessity and expediency of contemplated legislation for the protection of the public health, safety, and welfare, it is the intent of the Legislature that the State Board of Chiropractic Examiners and the Osteopathic Medical Board of California be reviewed pursuant to this section.

(g) It is not the intent of the Legislature in requiring a review under this section to amend the initiative measures that established the State Board of Chiropractic Examiners or the Osteopathic Medical Board of California.

SEC. 2. Section 473.6 of the Business and Professions Code is amended to read:

473.6. The chairpersons of the appropriate policy committees of the Legislature may refer to the Joint Legislative Sunset Review Committee for review of any legislative issues or proposals to create new licensure or regulatory categories, increase licensing requirements, or create a new licensing board under the provisions of this code or pursuant to Chapter 1.5 (commencing with Section 9148) of Part 1 of Division 2 of Title 2 of the Government Code.

SEC. 3. Section 805 of the Business and Professions Code is amended to read:

805. (a) As used in this section, the following terms have the following definitions:

(1) ''Peer review body'' includes:

(A) A medical or professional staff of any health care facility or clinic licensed under Division 2 (commencing with Section 1200) of the Health and Safety Code or of a facility certified to participate in the federal Medicare program as an ambulatory surgical center.

(B) A health care service plan registered under Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code or a disability insurer that contracts with licentiates to provide services at alternative rates of payment pursuant to Section 10133 of the Insurance Code.

(C) Any medical, psychological, marriage and family therapy, social work, dental, or podiatric professional society having as members at least 25 percent of the eligible licentiates in the area in which it functions (which must include at least one county), which is not organized for profit and which has been determined to be exempt from taxes pursuant to Section 23701 of the Revenue and Taxation Code.

(D) A committee organized by any entity consisting of or employing more than 25 licentiates of the same class that functions for the purpose of reviewing the quality of professional care provided by members or employees of that entity.

(2) ''Licentiate'' means a physician and surgeon, podiatrist, clinical psychologist, marriage and family therapist, clinical social worker, or dentist. ''Licentiate'' also includes a person authorized to practice medicine pursuant to Section 2113.

(3) ''Agency'' means the relevant state licensing agency having regulatory jurisdiction over the licentiates listed in paragraph (2).

(4) ''Staff privileges'' means any arrangement under which a licentiate is allowed to practice in or provide care for patients in a health facility. Those arrangements shall include, but are not limited to, full staff privileges, active staff privileges, limited staff privileges, auxiliary staff privileges, provisional staff privileges, temporary staff privileges, courtesy staff privileges, locum tenens arrangements, and contractual arrangements to provide professional services, including, but not limited to, arrangements to provide outpatient services.

(5) ''Denial or termination of staff privileges, membership, or employment'' includes failure or refusal to renew a contract or to renew, extend, or reestablish any staff privileges, if the action is based on medical disciplinary cause or reason.

(6) ''Medical disciplinary cause or reason'' means that aspect of a licentiate's competence or professional conduct that is reasonably likely to be detrimental to patient safety or to the delivery of patient care.

(7) ''805 report'' means the written report required under subdivision (b).

(b) The chief of staff of a medical or professional staff or other chief executive officer, medical director, or administrator of any peer review body and the chief executive officer or administrator of any licensed health care facility or clinic shall file an 805 report with the relevant agency within 15 days after the effective date of any of the following that occur as a result of an action of a peer review body:

(1) A licentiate's application for staff privileges or membership is denied or rejected for a medical disciplinary cause or reason.

(2) A licentiate's membership, staff privileges, or employment is terminated or revoked for a medical disciplinary cause or reason.

(3) Restrictions are imposed, or voluntarily accepted, on staff privileges, membership, or employment for a cumulative total of 30 days or more for any 12-month period, for a medical disciplinary cause or reason.

(c) The chief of staff of a medical or professional staff or other chief executive officer, medical director, or administrator of any peer review body and the chief executive officer or administrator of any licensed health care facility or clinic shall file an 805 report with the relevant agency within 15 days after any of the following occur after notice of either an impending investigation or the denial or rejection of the application for a medical disciplinary cause or reason:

(1) Resignation or leave of absence from membership, staff, or employment.

(2) The withdrawal or abandonment of a licentiate's application for staff privileges or membership.

(3) The request for renewal of those privileges or membership is withdrawn or abandoned.

(d) For purposes of filing an 805 report, the signature of at least one of the individuals indicated in subdivision (b) or (c) on the completed form shall constitute compliance with the requirement to file the report.

(e) An 805 report shall also be filed within 15 days following the imposition of summary suspension of staff privileges, membership, or employment, if the summary suspension remains in effect for a period in excess of 14 days.

(f) A copy of the 805 report, and a notice advising the licentiate of his or her right to submit additional statements or other information pursuant to Section 800, shall be sent by the peer review body to the licentiate named in the report.

The information to be reported in an 805 report shall include the name and license number of the licentiate involved, a description of the facts and circumstances of the medical disciplinary cause or reason, and any other relevant information deemed appropriate by the reporter.

A supplemental report shall also be made within 30 days following the date the licentiate is deemed to have satisfied any terms, conditions, or sanctions imposed as disciplinary action by the reporting peer review body. In performing its dissemination functions required by Section 805.5, the agency shall include a copy of a supplemental report, if any, whenever it furnishes a copy of the original 805 report.

If another peer review body is required to file an 805 report, a health care service plan is not required to file a separate report with respect to action attributable to the same medical disciplinary cause or reason. If the Medical Board of California or a licensing agency of another state revokes or suspends, without a stay, the license of a physician, a peer

review body is not required to file an 805 report when it takes an action as a result of the revocation or suspension.

(g) The reporting required by this section shall not act as a waiver of confidentiality of medical records and committee reports. The information reported or disclosed shall be kept confidential except as provided in subdivision (c) of Section 800 and Sections 803.1 and 2027, provided that a copy of the report containing the information required by this section may be disclosed as required by Section 805.5 with respect to reports received on or after January 1, 1976.

(h) The Medical Board of California, the Osteopathic Medical Board of California, and the Dental Board of California shall disclose reports as required by Section 805.5.

(i) An 805 report shall be maintained by an agency for dissemination purposes for a period of three years after receipt.

(j) No person shall incur any civil or criminal liability as the result of making any report required by this section.

(k) A willful failure to file an 805 report by any person who is designated or otherwise required by law to file an 805 report is punishable by a fine not to exceed one hundred thousand dollars ($100,000) per violation. The fine may be imposed in any civil or administrative action or proceeding brought by or on behalf of any agency having regulatory jurisdiction over the person regarding whom the report was or should have been filed. If the person who is designated or otherwise required to file an 805 report is a licensed physician and surgeon, the action or proceeding shall be brought by the Medical Board of California. The fine shall be paid to that agency but not expended until appropriated by the Legislature. A violation of this subdivision may constitute unprofessional conduct by the licentiate. A person who is alleged to have violated this subdivision may assert any defense available at law. As used in this subdivision, ''willful'' means a voluntary and intentional violation of a known legal duty.

(*l*) Except as otherwise provided in subdivision (k), any failure by the administrator of any peer review body, the chief executive officer or administrator of any health care facility, or any person who is designated or otherwise required by law to file an 805 report, shall be punishable by a fine that under no circumstances shall exceed fifty thousand dollars ($50,000) per violation. The fine may be imposed in any civil or administrative action or proceeding brought by or on behalf of any agency having regulatory jurisdiction over the person regarding whom the report was or should have been filed. If the person who is designated or otherwise required to file an 805 report is a licensed physician and surgeon, the action or proceeding shall be brought by the Medical Board of California. The fine shall be paid to that agency but not expended until appropriated by the Legislature. The amount of the fine imposed, not

exceeding fifty thousand dollars ($50,000) per violation, shall be proportional to the severity of the failure to report and shall differ based upon written findings, including whether the failure to file caused harm to a patient or created a risk to patient safety; whether the administrator of any peer review body, the chief executive officer or administrator of any health care facility, or any person who is designated or otherwise required by law to file an 805 report exercised due diligence despite the failure to file or whether they knew or should have known that an 805 report would not be filed; and whether there has been a prior failure to file an 805 report. The amount of the fine imposed may also differ based on whether a health care facility is a small or rural hospital as defined in Section 124840 of the Health and Safety Code.

(m) A health care service plan registered under Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code or a disability insurer that negotiates and enters into a contract with licentiates to provide services at alternative rates of payment pursuant to Section 10133 of the Insurance Code, when determining participation with the plan or insurer, shall evaluate, on a case-by-case basis, licentiates who are the subject of an 805 report, and not automatically exclude or deselect these licentiates.

SEC. 4. Section 805.7 of the Business and Professions Code is amended to read:

805.7. (a) The Medical Board of California shall work with interested parties in the pursuit and establishment of a pilot program, similar to those proposed by the Citizens Advocacy Center, of early detection of potential quality problems and resolutions through informal educational interventions.

(b) The Medical Board of California shall report to the Legislature its evaluation and findings and shall include recommendations regarding the statewide implementation of this pilot program before April 1, 2004.

SEC. 6. Section 2920 of the Business and Professions Code is amended to read:

2920. The Board of Psychology shall enforce and administer this chapter. The board shall consist of nine members, four of whom shall be public members.

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. 7. Section 2933 of the Business and Professions Code is amended to read:

2933. Except as provided by Section 159.5, the board shall employ and shall make available to the board within the limits of the funds received by the board all personnel necessary to carry out this chapter.

The board may employ, exempt from the State Civil Service Act, an executive officer to the Board of Psychology. The board shall make all expenditures to carry out this chapter. The board may accept contributions to effectuate the purposes of 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. 8. Section 4800 of the Business and Professions Code is amended to read:

4800. There is in the Department of Consumer Affairs a Veterinary Medical Board in which the administration of this chapter is vested. The board consists of seven members, three of whom shall be public members.

This section shall become inoperative on July 1, 2005, and, as of January 1, 2006, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 2006, deletes or extends the dates on which it becomes inoperative and is repealed.

The repeal of this section renders the board subject to the review provided for by Division 1.2 (commencing with Section 473).

SEC. 9. Section 4804.5 of the Business and Professions Code is amended to read:

4804.5. The board may appoint a person exempt from civil service who shall be designated as an executive officer and who shall exercise the powers and perform the duties delegated by the board and vested in him or her by this chapter.

This section shall become inoperative on July 1, 2005, and, as of January 1, 2006, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 2006, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 10. Section 4990.1 of the Business and Professions Code is amended to read:

4990.1. There is in the Department of Consumer Affairs a Board of Behavioral Sciences which consists of 11 members.

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. 11. Section 4990.8 of the Business and Professions Code is amended to read:

4990.8. The executive officer 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. 12. Section 5510 of the Business and Professions Code is amended to read:

5510. There is in the Department of Consumer Affairs a California Architects Board which consists of 10 members.

Any reference in law to the California Board of Architectural Examiners shall mean the California Architects Board.

This section shall become inoperative on July 1, 2005, and, as of January 1, 2006, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 2006, deletes or extends the dates on which it becomes inoperative and is repealed. The repeal of this section renders the board subject to the review required by Division 1.2 (commencing with Section 473).

SEC. 13. Section 5517 of the Business and Professions Code is amended to read:

5517. 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, 2005, and, as of January 1, 2006, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 2006, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 14. Section 5620 of the Business and Professions Code is amended to read:

5620. The duties, powers, purposes, responsibilities, and jurisdiction of the California State Board of Landscape Architects that were succeeded to and vested with the Department of Consumer Affairs in accordance with Chapter 908 of the Statutes of 1994 are hereby transferred to the California Architects Board. The Legislature finds that the purpose for the transfer of power is to promote and enhance the efficiency of state government and that assumption of the powers and duties by the California Architects Board shall not be viewed or construed as a precedent for the establishment of state regulation over a profession or vocation that was not previously regulated by a board, as defined in Section 477.

(a) There is in the Department of Consumer Affairs a California Architects Board as defined in Article 2 (commencing with Section 5510) of Chapter 3.

Whenever in this chapter ''board'' is used it refers to the California Architects Board.

(b) Except as provided herein, the board may delegate its authority under this chapter to the Landscape Architect Technical Committee.

(c) After review of proposed regulations, the board may direct the examining committee to notice and conduct hearings to adopt, amend, or repeal regulations pursuant to Section 5630, provided that the board itself shall take final action to adopt, amend, or repeal those regulations.

(d) The board shall not delegate its authority to discipline a landscape architect or to take action against a person who has violated this chapter.

(e) This section 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. 15. Section 5621 of the Business and Professions Code is amended to read:

5621. (a) There is hereby created within the jurisdiction of the board, a Landscape Architects Technical Committee, hereinafter referred to in this chapter as the landscape architects committee.

(b) The landscape architects committee shall consist of five members who shall be licensed to practice landscape architecture in this state. The Governor shall appoint three of the members. The Senate Committee on Rules and the Speaker of the Assembly shall appoint one member each.

(c) The initial members to be appointed by the Governor are as follows: one member for a term of one year; one member for a term of two years; and one member for a term of three years. The Senate Committee on Rules and the Speaker of the Assembly shall initially each appoint one member for a term of four years. Thereafter, appointments shall be made for four-year terms, expiring on June 1 of the fourth year and until the appointment and qualification of his or her successor or until one year shall have elapsed whichever first occurs. Vacancies shall be filled for the unexpired term.

(d) No person shall serve as a member of the landscape architects committee for more than two consecutive terms.

(e) This section 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. 16. Section 5622 of the Business and Professions Code is amended to read:

5622. (a) The landscape architects committee may assist the board in the examination of candidates for a landscape architect's license and, after investigation, evaluate and make recommendations regarding potential violations of this chapter.

(b) The landscape architects committee may investigate, assist, and make recommendations to the board regarding the regulation of landscape architects in this state.

(c) The landscape architects committee may perform duties and functions that have been delegated to it by the board pursuant to Section 5620.

(d) The landscape architects committee may send a representative to all meetings of the full board to report on the committee's activities.

(e) This section 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. 17. Section 6710 of the Business and Professions Code is amended to read:

6710. (a) There is in the Department of Consumer Affairs a Board for Professional Engineers and Land Surveyors, which consists of 13 members.

(b) Any reference in any law or regulation to the Board of Registration for Professional Engineers and Land Surveyors is deemed to refer to the Board for Professional Engineers and Land Surveyors.

(c) This section shall become inoperative on July 1, 2005, and, as of January 1, 2006, is repealed, unless a later enacted statute, that becomes effective on or before January 1, 2006, deletes or extends the dates on which it becomes inoperative and is repealed. The repeal of this section renders the board subject to the review required by Division 1.2 (commencing with Section 473). However, the review of the board shall be limited to only those unresolved issues identified by the Joint Legislative Sunset Review Committee.

SEC. 18. Section 6714 of the Business and Professions Code is amended to read:

6714. The board shall appoint an executive officer at a salary to be fixed and determined by the board with the approval of the Director of Finance.

This section shall become inoperative on July 1, 2005, and, as of January 1, 2006, is repealed, unless a later enacted statute, that becomes effective on or before January 1, 2006, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 19. Section 7810 of the Business and Professions Code is amended to read:

7810. The Board for Geologists and Geophysicists is within the department and is subject to the jurisdiction of the department. Except as provided in this section, the board shall consist of eight members, five of whom shall be public members, two of whom shall be geologists, and one of whom shall be a geophysicist.

Each member shall hold office until the appointment and qualification of the member's successor or until one year has elapsed from the expiration of the term for which the member was appointed, whichever

occurs first. Vacancies occurring prior to the expiration of the term shall be filled by appointment for the remainder of the unexpired term.

Each appointment shall be for a four-year term expiring June 1 of the fourth year following the year in which the previous term expired. No person shall serve as a member of the board for more than two consecutive terms.

The Governor shall appoint three of the public members and the three members qualified as provided in Section 7811. The Senate Committee on Rules and the Speaker of the Assembly shall each appoint a public member, and their initial appointment shall be made to fill, respectively, the first and second public member vacancies that occurred on or after January 1, 1983.

At the time the first vacancy is created by the expiration of the term of a public member appointed by the Governor, the board shall be reduced to consist of seven members, four of whom shall be public members, two of whom shall be geologists, and one of whom shall be a geophysicist. Notwithstanding any other provision of law, the term of that member shall not be extended for any reason, except as provided in this section.

This section 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. The repeal of this section renders the board subject to the review required by Division 1.2 (commencing with Section 473).

SEC. 20. Section 7815.5 of the Business and Professions Code is amended to read:

7815.5. The board may appoint a person exempt from civil service who shall be designated as an executive officer and who shall exercise the powers and perform the duties delegated by the board and vested in him or her by this chapter.

This section shall become inoperative on July 1, 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. 21. Section 8000 of the Business and Professions Code is amended to read:

8000. There is in the Department of Consumer Affairs a Court Reporters Board of California, which consists of five members, three of whom shall be public members and two of whom shall be holders of certificates issued under this chapter who have been actively engaged as shorthand reporters within this state for at least five years immediately preceding their appointment.

This section shall become inoperative on July 1, 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. The repeal of this section renders the board subject to the review required by Division 1.2 (commencing with Section 473), except that the review shall be limited to only those unresolved issues identified by the Joint Legislative Sunset Review Committee.

SEC. 22. Section 8005 of the Business and Professions Code is amended to read:

8005. The Court Reporters Board of California is charged with the executive functions necessary for effectuating the purposes of this chapter. It may appoint committees as it deems necessary or proper. The board may appoint, prescribe the duties, and fix the salary of an executive officer. Except as provided by Section 159.5, the board may also employ other employees as may be necessary, subject to civil service and other provisions of law.

This section shall become inoperative on July 1, 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.

The repeal of this section renders the board subject to the review required by Division 1.2 (commencing with Section 473), except that the review shall be limited to the board's examination program.

SEC. 23. Section 8520 of the Business and Professions Code is amended to read:

8520. (a) There is in the Department of Consumer Affairs a Structural Pest Control Board, which consists of seven members.

(b) Subject to the jurisdiction conferred upon the director by Division 1 (commencing with Section 100) of this code, the board is vested with the power to and shall administer the provisions of this chapter.

(c) It is the intent of the Legislature that consumer protection is the primary mission of the board.

(d) 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. The repeal of this section renders the board subject to the review required by Division 1.2 (commencing with Section 473).

SEC. 24. Section 8528 of the Business and Professions Code is amended to read:

8528. With the approval of the director, the board shall appoint a registrar, fix his or her compensation and prescribe his or her duties.

The registrar is the executive officer and secretary of the board.

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. 25. Section 1.5 of this bill incorporates amendments to Section 473.15 of the Business and Professions Code proposed by both this bill and SB 1954. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2003, (2) each bill amends Section 473.15 of the Business and Professions Code, and (3) this bill is enacted after SB 1954, in which case Section 1 of this bill shall not become operative.

SEC. 26. 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 alter the necessary criteria for the requirement of certain reports regarding healing arts licentiates as soon as possible, to authorize the Medical Board of California to expend moneys for implementation of an impending peer review process and to ensure that the exemption from certain reporting requirements for participants in the pilot program for detection of potential quality problems go into effect before the implementation of the program, to extend the Court Reporters Board deadlines for reporting to the Legislature and for authorization to examine, evaluate, and investigate complaints prior to passage of those deadlines, to enable the Occupational Therapy Board to properly administer the licensing law and protect the public from incompetent licensed occupational therapists as soon as possible, and to extend by one year the Legislature's sunset review process over specified licensing agencies in order to immediately delay the commencement of the legislative review process, it is necessary that this act go into effect immediately.

CHAPTER 1013

An act to amend Sections 25, 28, 29, 32, 650.4, 728, 2908, 4110, 4507, 4980, 4980.02, 4980.10, 4980.30, 4980.34, 4980.35, 4980.37, 4980.38, 4980.40, 4980.43, 4980.44, 4980.45, 4980.46, 4980.48, 4980.50, 4980.54, 4980.55, 4980.60, 4981, 4982, 4982.2, 4982.25, 4984.7, 4984.8, 4986.70, 4987.5, 4987.7, 4987.8, 4988, 4988.1, 4988.2, 4990.3, 4992.36, 4996.13, 4998, 4999.2, 6704, 6706, 6728.3, 6728.5, 6756, 6787, 6788, 6980.12, 7019, 7057, 7106.5, 7110, 7141, 8698.6, 8720.3, 8720.5, 8751, 8762, 8763, 8764.5, 8773.2, and 8773.4 of, and to repeal

Sections 4980.57 and 7058.1 of, the Business and Professions Code, to amend Sections 43.7, 43.93, and 43.95 of the Civil Code, to amend Section 13401.5 of the Corporations Code, to amend Section 35160.5 of the Education Code, to amend Sections 795 and 1014 of the Evidence Code, to amend Sections 6929, 7827, and 8502 of the Family Code, to amend Section 66452.6 of the Government Code, to amend Sections 1348.8, 1373, 1373.8, 11057, 111656.4, and 123105 of, and to repeal Article 2 (commencing with Section 11122) of Chapter 3 of Division 10 of, the Health and Safety Code, to amend Sections 10176, 10176.7, 10177, and 10177.8 of the Insurance Code, to amend Section 3209.8 of the Labor Code, and to amend Sections 4514, 5256.1, 5751, and 5751.2 of the Welfare and Institutions Code, relating to professions and vocations.

[Approved by Governor September 27, 2002. Filed with Secretary of State September 27, 2002.]

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

SECTION 1. Section 25 of the Business and Professions Code is amended to read:

25. Any person applying for a license, registration, or the first renewal of a license, after the effective date of this section, as a licensed marriage and family therapist, a licensed clinical social worker or as a licensed psychologist shall, in addition to any other requirements, show by evidence satisfactory to the agency regulating the business or profession, that he or she has completed training in human sexuality as a condition of licensure. The training shall be creditable toward continuing education requirements as deemed appropriate by the agency regulating the business or profession, and the course shall not exceed more than 50 contact hours.

The Psychology Examining Committee shall exempt any persons whose field of practice is such that they are not likely to have use for this training.

''Human sexuality'' as used in this section means the study of a human being as a sexual being and how he or she functions with respect thereto.

The content and length of the training shall be determined by the administrative agency regulating the business or profession and the agency shall proceed immediately upon the effective date of this section to determine what training, and the quality of staff to provide the training, is available and shall report its determination to the Legislature on or before July 1, 1977.

In the event that any licensing board or agency proposes to establish a training program in human sexuality, the board or agency shall first consult with other licensing boards or agencies which have established

or propose to establish a training program in human sexuality to ensure that the programs are compatible in scope and content.

SEC. 2. Section 28 of the Business and Professions Code is amended to read:

28. The Legislature finds that there is a need to ensure that professionals of the healing arts who have demonstrable contact with child abuse victims, potential child abuse victims, and child abusers and potential child abusers are provided with adequate and appropriate training regarding the assessment and reporting of child abuse which will ameliorate, reduce, and eliminate the trauma of child abuse and neglect and ensure the reporting of child abuse in a timely manner to prevent additional occurrences.

The Psychology Examining Committee and the Board of Behavioral Sciences shall establish required training in the area of child abuse assessment and reporting for all persons applying for initial licensure and renewal of a license as a psychologist, clinical social worker, or marriage and family therapist on or after January 1, 1987. This training shall be required one time only for all persons applying for initial licensure or for licensure renewal on or after January 1, 1987.

All persons applying for initial licensure and renewal of a license as a psychologist, clinical social worker, or marriage and family therapist on or after January 1, 1987, shall, in addition to all other requirements for licensure or renewal, have completed coursework or training in child abuse assessment and reporting which meets the requirements of this section, including detailed knowledge of Section 11165 of the Penal Code. The training shall:

(a) Be completed after January 1, 1983.

(b) Be obtained from one of the following sources:

(1) An accredited or approved educational institution, as defined in Section 2902, including extension courses offered by those institutions.

(2) An educational institution approved by the Council for Private Postsecondary and Vocational Education pursuant to Article 4 (commencing with Section 94760) of Chapter 7 of Part 59 of the Education Code.

(3) A continuing education provider approved by the responsible board or examining committee.

(4) A course sponsored or offered by a professional association or a local, county, or state department of health or mental health for continuing education and approved by the responsible board.

(c) Have a minimum of 7 contact hours.

(d) Include the study of the assessment and method of reporting of sexual assault, neglect, severe neglect, general neglect, willful cruelty or unjustifiable punishment, corporal punishment or injury, and abuse in out-of-home care. The training shall also include physical and

behavioral indicators of abuse, crisis counseling techniques, community resources, rights and responsibilities of reporting, consequences of failure to report, caring for a child's needs after a report is made, sensitivity to previously abused children and adults, and implications and methods of treatment for children and adults.

(e) All applicants shall provide the appropriate board with documentation of completion of the required child abuse training.

The Psychology Examining Committee and the Board of Behavioral Sciences shall exempt any applicant who applies for an exemption from the requirements of this section and who shows to the satisfaction of the committee or board that there would be no need for the training in his or her practice because of the nature of that practice.

It is the intent of the Legislature that a person licensed as a psychologist, clinical social worker, or marriage and family therapist have minimal but appropriate training in the areas of child abuse assessment and reporting. It is not intended that by solely complying with the requirements of this section, a practitioner is fully trained in the subject of treatment of child abuse victims and abusers.

(f) This section shall become operative on January 1, 1997.

SEC. 3. Section 29 of the Business and Professions Code is amended to read:

29. (a) The Board of Psychology and the Board of Behavioral Sciences shall consider adoption of continuing education requirements including training in the area of recognizing chemical dependency and early intervention for all persons applying for renewal of a license as a psychologist, clinical social worker, or marriage and family therapist.

(b) Prior to the adoption of any regulations imposing continuing education relating to alcohol and other chemical dependency, the board and committee are urged to consider coursework to include, but not necessarily be limited to, the following topics:

(1) Historical and contemporary perspectives on alcohol and other drug abuse.

(2) Extent of the alcohol and drug abuse epidemic and its effects on the individual, family, and community.

(3) Recognizing the symptoms of alcoholism and drug addiction.

(4) Making appropriate interpretations, interventions, and referrals.

(5) Recognizing and intervening with affected family members.

(6) Learning about current programs of recovery, such as 12 step programs, and how therapists can effectively utilize these programs.

The Board of Psychology and the Board of Behavioral Sciences shall submit a report to the Legislature on or before June 30, 1991, indicating whether regulations were adopted or are proposed imposing continuing education requirements on their respective licensees.

If the board or committee has adopted or proposed regulations, the report shall contain information as to the content of the requirement and how the requirement was developed. The board and committee are urged to consider the elements of training contained herein when adopting or proposing continuing education requirements in the areas of alcohol and chemical dependency.

If the board or committee has not adopted proposed regulations, the report shall indicate how concerns of consumer protection are to be met, for example, how the public will be assured that licensed psychotherapists have minimal, up-to-date competency in chemical dependency detection and early intervention.

SEC. 4. Section 32 of the Business and Professions Code is amended to read:

32. (a) The Legislature finds that there is a need to ensure that professionals of the healing arts who have or intend to have significant contact with patients who have, or are at risk to be exposed to, acquired immune deficiency syndrome (AIDS) are provided with training in the form of continuing education regarding the characteristics and methods of assessment and treatment of the condition.

(b) A board vested with the responsibility of regulating the following licensees shall consider including training regarding the characteristics and method of assessment and treatment of acquired immune deficiency syndrome (AIDS) in any continuing education or training requirements for those licensees: chiropractors, medical laboratory technicians, dentists, dental hygienists, dental assistants, physicians and surgeons, podiatrists, registered nurses, licensed vocational nurses, psychologists, physician assistants, respiratory therapists, acupuncturists, marriage and family therapists, licensed educational psychologists, and clinical social workers.

SEC. 5. Section 650.4 of the Business and Professions Code is amended to read:

650.4. (a) Notwithstanding Section 650, subdivision (o) of Section 4982, or any other provision of law, it shall not be unlawful for a person licensed pursuant to Chapter 13 (commencing with Section 4980) or any other person, to participate in or operate a group advertising and referral service for marriage and family therapists if all of the following conditions are met:

(1) The patient referrals by the service are the result of patient-initiated responses to service advertising.

(2) The service advertises, if at all, in conformity with Section 651 and subdivision (p) of Section 4982.

(3) The service does not employ a solicitor to solicit prospective patients or clients.

(4) The service does not impose a fee on the member marriage and family therapists that is dependent upon the number of referrals or amount of professional fees paid by the patient to the marriage and family therapist.

(5) Participating marriage and family therapists charge no more than their usual and customary fees to any patient referred.

(6) The service registers with the Board of Behavioral Sciences, providing its name, street address, and telephone number.

(7) The service files with the Board of Behavioral Sciences a copy of the standard form contract that regulates its relationship with member marriage and family therapists, which contract shall be confidential and not open to public inspection.

(8) If more than 50 percent of its referrals are made to one individual, association, partnership, corporation, or group of three or more marriage and family therapists, the service discloses that fact in all public communications, including, but not limited to, communications by means of television, radio, motion picture, newspaper, book, list, or directory of healing arts practitioners.

(9) (A) When member marriage and family therapists pay any fee to the service, any advertisement by the service shall clearly and conspicuously disclose that fact by including a statement as follows: ''Paid for by participating marriage and family therapists.'' In print advertisements, the required statement shall be in at least 9-point type. In radio advertisements, the required statement shall be articulated so as to be clearly audible and understandable by the radio audience. In television advertisements, the required statement shall be either clearly audible and understandable to the television audience, or displayed in a written form that remains clearly visible to the television audience for at least five seconds.

(B) The Board of Behavioral Sciences may suspend or revoke the registration of any service that fails to comply with subparagraph (A). No service may reregister with the board if its registration currently is under suspension for a violation of subparagraph (A), nor may a service reregister with the board for a period of one year after it has had a registration revoked by the board for a violation of subparagraph (A).

(b) The Board of Behavioral Sciences may adopt regulations necessary to enforce and administer this section.

(c) The Board of Behavioral Sciences or 10 individual licensed marriage and family therapists may petition the superior court of any county for the issuance of an injunction restraining any conduct that constitutes a violation of this section.

(d) It is unlawful and shall constitute a misdemeanor for a person to operate a group advertising and referral service for marriage and family

therapists without providing its name, address, and telephone number to the Board of Behavioral Sciences.

(e) It is the intent of the Legislature in enacting this section not to otherwise affect the prohibitions of Section 650. The Legislature intends to allow the pooling of resources by marriage and family therapists for the purpose of advertising.

(f) This section shall not be construed in any manner that would authorize a referral service to engage in the practice of marriage and family therapy.

SEC. 6. Section 728 of the Business and Professions Code is amended to read:

728. (a) Any psychotherapist or employer of a psychotherapist who becomes aware through a patient that the patient had alleged sexual intercourse or alleged sexual contact with a previous psychotherapist during the course of a prior treatment, shall provide to the patient a brochure promulgated by the department that delineates the rights of, and remedies for, patients who have been involved sexually with their psychotherapist. Further, the psychotherapist or employer shall discuss with the patient the brochure prepared by the department.

(b) Failure to comply with this section constitutes unprofessional conduct.

(c) For the purpose of this section, the following definitions apply:

(1) ''Psychotherapist'' means a physician and surgeon specializing in the practice of psychiatry or practicing psychotherapy, a psychologist, a clinical social worker, a marriage and family therapist, a psychological assistant, marriage and family therapist registered intern or trainee, or associate clinical social worker.

(2) ''Sexual contact'' means the touching of an intimate part of another person.

(3) ''Intimate part'' and ''touching'' have the same meaning as defined in subdivisions (f) and (d), respectively, of Section 243.4 of the Penal Code.

(4) ''The course of a prior treatment'' means the period of time during which a patient first commences treatment for services that a psychotherapist is authorized to provide under his or her scope of practice, or that the psychotherapist represents to the patient as being within his or her scope of practice, until the psychotherapist-patient relationship is terminated.

SEC. 10. Section 2908 of the Business and Professions Code is amended to read:

2908. Nothing in this chapter shall be construed to prevent qualified members of other recognized professional groups licensed to practice in the State of California, such as, but not limited to, physicians, clinical social workers, educational psychologists, marriage and family

therapists, optometrists, psychiatric technicians, or registered nurses, or attorneys admitted to the California State Bar, or persons utilizing hypnotic techniques by referral from persons licensed to practice medicine, dentistry or psychology, or persons utilizing hypnotic techniques which offer avocational or vocational self-improvement and do not offer therapy for emotional or mental disorders, or duly ordained members of the recognized clergy, or duly ordained religious practitioners from doing work of a psychological nature consistent with the laws governing their respective professions, provided they do not hold themselves out to the public by any title or description of services incorporating the words ''psychological,'' ''psychologist,'' ''psychology,'' "psychometrist,'' ''psychometrics,'' or "psychometry,'' or that they do not state or imply that they are licensed to practice psychology; except that persons licensed under Article 5 (commencing with Section 4986) of Chapter 13 of Division 2 may hold themselves out to the public as licensed educational psychologists.

SEC. 11. 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. When needed to protect public safety, 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 or license denial proceeding before the board shall the temporary permitholder be deemed to have a vested property right or interest in the permit.

SEC. 12. Section 4507 of the Business and Professions Code is amended to read:

4507. This chapter shall not apply to the following:

(a) Physicians and surgeons licensed pursuant to Chapter 5 (commencing with Section 2000) of Division 2.

(b) Psychologists licensed pursuant to Chapter 6.6 (commencing with Section 2900) of Division 2.

(c) Registered nurses licensed pursuant to Chapter 6 (commencing with Section 2700) of Division 2.

(d) Vocational nurses licensed pursuant to Chapter 6.5 (commencing with Section 2840) of Division 2.

(e) Social workers or clinical social workers licensed pursuant to Chapter 17 (commencing with Section 9000) of Division 3.

(f) Marriage and family therapists licensed pursuant to Chapter 13 (commencing with Section 4980) of Division 2.

(g) Teachers credentialed pursuant to Chapter 1.5 (commencing with Section 13101) of Division 10 of the Education Code.

(h) Occupational therapists as specified in Chapter 5.6 (commencing with Section 2570) of Division 2.

(i) Art therapists, dance therapists, music therapists, and recreation therapists, as defined in Division 5 (commencing with Section 70001) of Title 22 of the California Administrative Code, who are personnel of health facilities licensed pursuant to Chapter 2 (commencing with Section 1250) of Division 2 of the Health and Safety Code.

(j) Any other categories of persons the board determines are entitled to exemption from this chapter because they have complied with other licensing provisions of this code or because they are deemed by statute or by regulations contained in the California Administrative Code to be adequately trained in their respective occupations. The exemptions shall apply only to a given specialized area of training within the specific discipline for which the exemption is granted.

SEC. 13. Section 4980 of the Business and Professions Code is amended to read:

4980. (a) Many California families and many individual Californians are experiencing difficulty and distress, and are in need of wise, competent, caring, compassionate, and effective counseling in order to enable them to improve and maintain healthy family relationships.

Healthy individuals and healthy families and healthy relationships are inherently beneficial and crucial to a healthy society, and are our most precious and valuable natural resource. Marriage and family therapists provide a crucial support for the well-being of the people and the State of California.

(b) No person may engage in the practice of marriage and family therapy as defined by Section 4980.02, unless he or she holds a valid license as a marriage and family therapist, or unless he or she is specifically exempted from that requirement, nor may any person advertise himself or herself as performing the services of a marriage, family, child, domestic, or marital consultant, or in any way use these or any similar titles, including the letters ''M.F.T.'' or ''M.F.C.C.,'' or other name, word initial, or symbol in connection with or following his or her name to imply that he or she performs these services without a license as provided by this chapter. Persons licensed under Article 4 (commencing with Section 4996) of Chapter 14 of Division 2, or under Chapter 6.6 (commencing with Section 2900) may engage in such practice or advertise that they practice marriage and family therapy but may not advertise that they hold the marriage and family therapist's license.

SEC. 14. Section 4980.02 of the Business and Professions Code is amended to read:

4980.02. For the purposes of this chapter, the practice of marriage and family therapy shall mean that service performed with individuals, couples, or groups wherein interpersonal relationships are examined for the purpose of achieving more adequate, satisfying, and productive marriage and family adjustments. This practice includes relationship and premarriage counseling.

The application of marriage and family therapy principles and methods includes, but is not limited to, the use of applied pyschotherapeutic techniques, to enable individuals to mature and grow within marriage and the family, and the provision of explanations and interpretations of the psychosexual and psychosocial aspects of relationships.

SEC. 15. Section 4980.10 of the Business and Professions Code is amended to read:

4980.10. A person engages in the practice of marriage and family therapy who performs or offers to perform or holds himself or herself out as able to perform this service for remuneration in any form, including donations.

SEC. 16. Section 4980.30 of the Business and Professions Code is amended to read:

4980.30. Except as otherwise provided herein, a person desiring to practice and to advertise the performance of marriage and family therapy services shall apply to the board for a license and shall pay the license fee required by this chapter.

SEC. 17. Section 4980.34 of the Business and Professions Code is amended to read:

4980.34. It is the intent of the Legislature that the board employ its resources for each and all of the following functions:

(a) The licensing of marriage and family therapists, clinical social workers, and educational psychologists.

(b) The development and administration of written and oral licensing examinations and examination procedures, as specified, consistent with prevailing standards for the validation and use of licensing and certification tests. Examinations shall measure knowledge and abilities demonstrably important to the safe, effective practice of the profession.

(c) Enforcement of laws designed to protect the public from incompetent, unethical, or unprofessional practitioners.

(d) Consumer education.

SEC. 18. Section 4980.35 of the Business and Professions Code is amended to read:

4980.35. (a) The Legislature acknowledges that the basic obligation to provide a complete and accurate application for a marriage and family therapist license lies with the applicant. At the same time, the Legislature recognizes that an effort should be made by the board to ensure that persons who enter degree programs and supervisorial training settings that meet the requirements of this chapter are enabled to discern the requirements for licensing and to take the examination when they have completed their educational and experience requirements.

(b) In order that the board, the educational institutions, and the supervisors who monitor the education and experience of applicants for licensure may develop greater cooperation, the board shall do all of the following:

(1) Apply a portion of its limited resources specifically to the task of communicating information about its activities, the requirements and qualifications for licensure, and the practice of marriage and family therapy to the relevant educational institutions, supervisors, professional associations, applicants, trainees, interns, and the consuming public.

(2) Develop policies and procedures to assist educational institutions in meeting the curricula requirements of Section 4980.40 and any regulations adopted pursuant to that section, so that those educational institutions may better provide assurance to their students that the curriculum offered to fulfill the educational requirements for licensure will meet those requirements at the time of the student's application for licensure.

(3) Notify applicants in the application procedure when applications are incomplete, inaccurate, or deficient, and inform applicants of any remediation, reconsideration, or appeal procedures that may be applicable.

(4) Undertake, or cause to be undertaken, further comprehensive review, in consultation with educational institutions, professional associations, supervisors, interns, and trainees, of the supervision of interns and trainees, which shall include, but not be limited to, the following, and shall propose regulations regarding the supervision of interns and trainees which may include, but not be limited to, the following:

(A) Supervisor qualifications.

(B) Continuing education requirements of supervisors.

(C) Registration or licensing of supervisors, or both.

(D) Responsibilities of supervisors in general.

(E) The board's authority in cases of noncompliance or negligence by supervisors.

(F) The intern's and trainee's need for guidance in selecting well-balanced and high quality professional training opportunities within his or her community.

(G) The role of the supervisor in advising and encouraging his or her intern or trainee regarding the necessity or value and appropriateness of the intern or trainee engaging in personal psychotherapy, so as to enable the intern or trainee to become a more competent marriage and family therapist.

SEC. 19. Section 4980.37 of the Business and Professions Code is amended to read:

4980.37. (a) In order to provide an integrated course of study and appropriate professional training, while allowing for innovation and individuality in the education of marriage and family therapists, a degree program which meets the educational qualifications for licensure shall include all of the following:

(1) Provide an integrated course of study that trains students generally in the diagnosis, assessment, prognosis, and treatment of mental disorders.

(2) Prepare students to be familiar with the broad range of matters that may arise within marriage and family relationships.

(3) Train students specifically in the application of marriage and family relationship counseling principles and methods.

(4) Encourage students to develop those personal qualities that are intimately related to the counseling situation such as integrity, sensitivity, flexibility, insight, compassion, and personal presence.

(5) Teach students a variety of effective psychotherapeutic techniques and modalities that may be utilized to improve, restore, or maintain healthy individual, couple, and family relationships.

(6) Permit an emphasis or specialization that may address any one or more of the unique and complex array of human problems, symptoms, and needs of Californians served by marriage and family therapists.

(7) Prepare students to be familiar with crosscultural mores and values, including a familiarity with the wide range of racial and ethnic backgrounds common among California's population, including, but not limited to, Blacks, Hispanics, Asians, and Native Americans.

(b) Educational institutions are encouraged to design the practicum required by subdivision (b) of Section 4980.40 to include marriage and family therapy experience in low-income and multicultural mental health settings.

SEC. 20. Section 4980.38 of the Business and Professions Code is amended to read:

4980.38. (a) Each educational institution preparing applicants to qualify for licensure shall notify each of its students by means of its public documents or otherwise in writing that its degree program is designed to meet the requirements of Sections 4980.37 and 4980.40, and shall certify to the board that it has so notified its students.

(b) In addition to all of the other requirements for licensure, each applicant shall submit to the board a certification by the chief academic officer, or his or her designee, of the applicant's educational institution that the applicant has fulfilled the requirements enumerated in Sections 4980.37 and 4980.40, and subdivisions (d) and (e) of Section 4980.41.

(c) An applicant for an intern registration who has completed a program to update his or her degree in accordance with paragraph (1) of subdivision (i) of Section 4980.40 shall furnish to the board certification by the chief academic officer of a school, college, or university accredited by the Western Association of Schools and Colleges, or from a school, college, or university meeting accreditation standards comparable to those of the Western Association of Schools and Colleges, that the applicant has successfully completed all academic work necessary to comply with the current educational requirements for licensure as a marriage and family therapist.

SEC. 21. 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 and family therapy, 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 and family therapist.

(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 and family therapy and psychotherapy under the supervision of a licensed marriage and family therapist, 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.

(j) An applicant for licensure trained in an educational institution outside the United States shall demonstrate to the satisfaction of the board that he or she possesses a qualifying degree that is equivalent to a degree earned from a school, college, or university accredited by the Western Association of Schools and Colleges, or approved by the Bureau of Private Postsecondary and Vocational Education. 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 shall provide any other documentation the board deems necessary.

SEC. 22. Section 4980.43 of the Business and Professions Code is amended to read:

4980.43. (a) For all applicants, a minimum of two calendar years of supervised experience is required, which experience shall consist of 3,000 hours obtained over a period of not less than 104 weeks. Not less than 1,500 hours of experience shall be gained subsequent to the granting of the qualifying master's or doctor's degree. For those applicants who enroll in a qualifying degree program on or after January

1, 1995, not more than 750 hours of counseling and direct supervisor contact may be obtained prior to the granting of the qualifying master's or doctor's degree. However, this limitation shall not be interpreted to include professional enrichment activities. Except for personal psychotherapy hours gained after enrollment and commencement of classes in a qualifying degree program, no hours of experience may be gained prior to becoming a trainee. All experience shall be gained within the six years immediately preceding the date the application for licensure was filed, except that up to 500 hours of clinical experience gained in the supervised practicum required by subdivision (b) of Section 4980.40 shall be exempt from this six-year requirement.

(b) All applicants and registrants shall be at all times under the supervision of a supervisor who shall be responsible for ensuring that the extent, kind, and quality of counseling performed is consistent with the training and experience of the person being supervised, and who shall be responsible to the board for compliance with all laws, rules, and regulations governing the practice of marriage and family therapy. Experience shall be gained by interns and trainees either as an employee or as a volunteer in any allowable work setting specified in this chapter. The requirements of this chapter regarding gaining hours of experience and supervision are applicable equally to employees and volunteers. Experience shall not be gained by interns or trainees as an independent contractor.

(c) Supervision shall include at least one hour of direct supervisor contact for each week of experience claimed. A trainee shall receive an average of at least one hour of direct supervisor contact for every five hours of client contact in each setting. A person gaining postdegree experience shall receive an average of at least one hour of direct supervisor contact for every 10 hours of client contact in each setting in which experience is gained. For purposes of this section, ''one hour of direct supervisor contact'' means one hour of face-to-face contact on an individual basis or two hours of face-to-face contact in a group of not more than eight persons. The contact may be counted toward the experience requirement for licensure, up to the maximum permitted by subdivision (d). All experience gained by a trainee shall be monitored by the supervisor as specified in regulation. The 5-to-1 and 10-to-1 ratios specified in this subdivision shall be applicable to all hours gained on or after January 1, 1995.

(d) (1) The experience required by Section 4980.40 shall include supervised marriage and family therapy, and up to one-third of the hours may include direct supervisor contact and other professional enrichment activities.

(2) ''Professional enrichment activities,'' for the purposes of this section, may include group, marital or conjoint, family, or individual

psychotherapy received by an applicant. This psychotherapy may include up to 100 hours taken subsequent to enrolling and commencing classes in a qualifying degree program, or as an intern, and each of those hours shall be triple counted toward the professional experience requirement. This psychotherapy shall be performed by a licensed marriage and family therapist, licensed clinical social worker, licensed psychologist, licensed physician certified in psychiatry by the American Board of Psychiatry and Neurology, or a licensed physician who has completed a residency in psychiatry.

(e) The experience required by Section 4980.40 may be gained as a trainee in the following settings: a governmental entity, a school, college or university, a nonprofit and charitable corporation, 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, if the experience is gained by the trainee solely as part of the position for which he or she is employed.

(f) The experience required by Section 4980.40 may be gained as an intern as specified in subdivision (e), or when employed in a private practice owned by a licensed marriage and family therapist, a licensed psychologist, a licensed clinical social worker, a licensed physician and surgeon, or a professional corporation of any of those licensed professions. Employment in a private practice setting shall not commence until the applicant has been registered as an intern. When an intern is employed in a private practice setting by any licensee enumerated in this section, or by a professional corporation of any of those licensees, the intern shall be under the direct supervision of a licensee enumerated in subdivision (f) of Section 4980.40 who shall be employed by and practice at the same site as the intern's employer. An intern employed in a private practice setting shall not pay his or her employer for supervision. While an intern may be either a paid employee or a volunteer, employers are encouraged to provide fair remuneration.

(g) All interns shall register with the board in order to be credited for postdegree hours of experience gained toward licensure, regardless of the setting where those hours are to be gained. Except as provided in subdivision (h), all postdegree hours shall be gained as a registered intern.

(h) Except when employed in a private practice setting, all postdegree hours of experience shall be credited toward licensure so long as the applicant applies for the intern registration within 90 days of the granting

of the qualifying master's or doctor's degree and is thereafter granted the intern registration by the board.

(i) Trainees and interns shall not receive any remuneration from patients or clients, and shall only be paid by their employer.

(j) Trainees and interns shall only perform services at the place where their employer regularly conducts business, which may include performing services at other locations, so long as the services are performed under the direction and control of their employer and supervisor, and in compliance with the laws and regulations pertaining to supervision. Trainees and interns shall have no proprietary interest in the employer's business.

(k) An intern or trainee who provides volunteered services or other services, and who receives no more than a total, from all work settings, of five hundred dollars ($500) per month as reimbursement for expenses actually incurred by that intern or trainee for services rendered in any lawful work setting other than a private practice shall be considered an employee and not an independent contractor. The board may audit applicants who receive reimbursement for expenses, and the applicant shall have the burden of demonstrating that the payments received were for reimbursement of expenses actually incurred.

(*l*) Each educational institution preparing applicants for licensure pursuant to this chapter shall consider requiring, and shall encourage, its students to undergo individual, marital or conjoint, family, or group counseling or psychotherapy, as appropriate. Each supervisor shall consider, advise, and encourage his or her interns and trainees regarding the advisability of undertaking individual, marital or conjoint, family, or group counseling or psychotherapy, as appropriate. Insofar as it is deemed appropriate and is desired by the applicant, the educational institution and supervisors are encouraged to assist the applicant in locating that counseling or psychotherapy at a reasonable cost.

SEC. 23. Section 4980.44 of the Business and Professions Code is amended to read:

4980.44. (a) An unlicensed marriage and family therapist 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 and family therapist, 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 and family therapist 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. 24. Section 4980.45 of the Business and Professions Code is amended to read:

4980.45. (a) A licensed professional in private practice who is a marriage and family therapist, a psychologist, a clinical social worker, a licensed physician certified in psychiatry by the American Board of Psychiatry and Neurology, or a licensed physician who has completed a residency in psychiatry and who is described in subdivision (f) of Section 4980.40 may supervise or employ, at any one time, no more than two unlicensed marriage and family therapist registered interns in that private practice.

(b) A marriage and family therapy corporation may employ, at any one time, no more than two registered interns for each employee or shareholder who is qualified to provide supervision pursuant to subdivision (f) of Section 4980.40. In no event shall any corporation employ, at any one time, more than 10 registered interns. In no event shall any supervisor supervise, at any one time, more than two registered interns. Persons who supervise interns shall be employed full time by the professional corporation and shall be actively engaged in performing

professional services at and for the professional corporation. Employment and supervision within a marriage and family therapy corporation shall be subject to all laws and regulations governing experience and supervision gained in a private practice setting.

SEC. 25. Section 4980.46 of the Business and Professions Code is amended to read:

4980.46. Any licensed marriage and family therapist who conducts a private practice under a fictitious business name shall not use any name that is false, misleading, or deceptive, and shall inform the patient, prior to the commencement of treatment, of the name and license designation of the owner or owners of the practice.

SEC. 26. Section 4980.48 of the Business and Professions Code is amended to read:

4980.48. A trainee shall inform each client or patient, prior to performing any professional services, that he or she is unlicensed and under the supervision of a licensed marriage and family therapist, a licensed clinical social worker, a licensed psychologist, or a licensed physician certified in psychiatry by the American Board of Psychiatry and Neurology.

SEC. 27. Section 4980.50 of the Business and Professions Code is amended to read:

4980.50. (a) Every applicant who meets the educational and experience requirements and applies for a license as a marriage and family therapist 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.

(b) An applicant who has qualified pursuant to this chapter shall be issued a license as a marriage and family therapist in the form that the board may deem appropriate.

SEC. 28. Section 4980.54 of the Business and Professions Code is amended to read:

4980.54. (a) The Legislature recognizes that the education and experience requirements in this chapter constitute only minimal requirements to assure that an applicant is prepared and qualified to take the licensure examinations and, if he or she passes those examinations, to begin practice.

(b) In order to continuously improve the competence of licensed marriage and family therapists and as a model for all psychotherapeutic professions, the Legislature encourages all licensees to regularly engage in continuing education related to the profession or scope of practice as defined in this chapter.

(c) (1) Except as provided in subdivision (e), on and after January 1, 2000, the board shall not renew any license pursuant to this chapter unless the applicant certifies to the board, on a form prescribed by the board, that he or she has completed not less than 36 hours of approved continuing education in or relevant to the field of marriage and family therapy in the preceding two years, as determined by the board.

(2) For those persons renewing during 1999, the board shall not renew any license pursuant to this chapter unless the applicant certifies

to the board, on a form prescribed by the board, that he or she has completed not less than 18 hours of approved continuing education in or relevant to the field of marriage and family therapy, as determined by the board. The coursework of continuing education described in this paragraph may be taken on or after the effective date of the continuing education regulations adopted by the board pursuant to the other provisions of this section.

(d) The board shall have the right to audit the records of any applicant to verify the completion of the continuing education requirement. Applicants shall maintain records of completion of required continuing education coursework for a minimum of two years and shall make these records available to the board for auditing purposes upon request.

(e) The board may establish exceptions from the continuing education requirements of this section for good cause, as defined by the board.

(f) The continuing education shall be obtained from one of the following sources:

(1) An accredited school or state-approved school that meets the requirements set forth in Section 4980.40. Nothing in this paragraph shall be construed as requiring coursework to be offered as part of a regular degree program.

(2) Other continuing education providers, including, but not limited to, a professional marriage and family therapist association, a licensed health facility, a governmental entity, a continuing education unit of an accredited four-year institution of higher learning, or a mental health professional association, approved by the board.

(3) The board shall establish, by regulation, a procedure for approving providers of continuing education courses, and all providers of continuing education, as described in paragraphs (1) and (2), shall adhere to procedures established by the board. The board may revoke or deny the right of a provider to offer continuing education coursework pursuant to this section for failure to comply with the requirements of this section or any regulation adopted pursuant to this section.

(g) Training, education, and coursework by approved providers shall incorporate one or more of the following:

(1) Aspects of the discipline that are fundamental to the understanding or the practice of marriage and family therapy.

(2) Aspects of the discipline of marriage and family therapy in which significant recent developments have occurred.

(3) Aspects of other disciplines that enhance the understanding or the practice of marriage and family therapy.

(h) A system of continuing education for licensed marriage and family therapists shall include courses directly related to the diagnosis, assessment, and treatment of the client population being served.

(i) On and after January 1, 1997, the board shall, by regulation, fund the administration of this section through continuing education provider fees to be deposited in the Behavioral Sciences 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. For purposes of this subdivision, a provider of continuing education as described in paragraph (1) of subdivision (f) shall be deemed to be an approved provider.

(j) The continuing education requirements of this section shall comply fully with the guidelines for mandatory continuing education established by the Department of Consumer Affairs pursuant to Section 166.

SEC. 29. Section 4980.55 of the Business and Professions Code is amended to read:

4980.55. As a model for all therapeutic professions, and to acknowledge respect and regard for the consuming public, all marriage and family therapists are encouraged to provide to each client, at an appropriate time and within the context of the psychotherapeutic relationship, an accurate and informative statement of the therapist's experience, education, specialities, professional orientation, and any other information deemed appropriate by the licensee.

SEC. 30. Section 4980.57 of the Business and Professions Code is repealed.

SEC. 31. Section 4980.60 of the Business and Professions Code is amended to read:

4980.60. (a) The board may adopt those rules and regulations as may be necessary to enable it to carry into effect the provisions of this chapter. The adoption, amendment, or repeal of those rules and regulations shall be made in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(b) The board may, by rules or regulations, adopt, amend, or repeal rules of advertising and professional conduct appropriate to the establishment and maintenance of a high standard of integrity in the profession, provided that the rules or regulations are not inconsistent with Section 4982. Every person who holds a license to practice marriage and family therapy shall be governed by the rules of professional conduct.

SEC. 34. Section 4981 of the Business and Professions Code is amended to read:

4981. This article applies to licenses to engage in the business of marriage and family therapy, and does not apply to the licenses provided for in Article 5 (commencing with Section 4986) except that the board

shall have all powers provided in this article not inconsistent with this chapter.

SEC. 35. Section 4982 of the Business and Professions Code is amended to read:

4982. The board may refuse to issue any registration or license, or may suspend or revoke the license or registration of any registrant or licensee if the applicant, licensee, or registrant has been guilty of unprofessional conduct. Unprofessional conduct shall include, but not be limited to:

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

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

(c) Administering to himself or herself any controlled substance or using of any of the dangerous drugs specified in Section 4022, or of any alcoholic beverage to the extent, or in a manner, as to be dangerous or injurious to the person applying for a registration or license or holding a registration or license under this chapter, or to any other person, or to the public, or, to the extent that the use impairs the ability of the person applying for or holding a registration or license to conduct with safety to the public the practice authorized by the registration or license, or the conviction of more than one misdemeanor or any felony involving the use, consumption, or self-administration of any of the substances

referred to in this subdivision, or any combination thereof. The board shall deny an application for a registration or license or revoke the license or registration of any person, other than one who is licensed as a physician and surgeon, who uses or offers to use drugs in the course of performing marriage and family therapy services.

(d) Gross negligence or incompetence in the performance of marriage and family therapy.

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

(f) Misrepresentation as to the type or status of a license or registration held by the person, or otherwise misrepresenting or permitting misrepresentation of his or her education, professional qualifications, or professional affiliations to any person or entity.

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

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

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

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

(k) Engaging in sexual relations with a client, or a former client within two years following termination of therapy, soliciting sexual relations with a client, or committing an act of sexual abuse, or sexual misconduct with a client, or committing an act punishable as a sexually related crime, if that act or solicitation is substantially related to the qualifications, functions, or duties of a marriage and family therapist.

(*l*) Performing, or holding oneself out as being able to perform, or offering to perform, or permitting any registered trainee or registered intern under supervision to perform, any professional services beyond the scope of the license authorized by this chapter.

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

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

(o) Paying, accepting, or soliciting any consideration, compensation, or remuneration, whether monetary or otherwise, for the referral of professional clients. All consideration, compensation, or remuneration

shall be in relation to professional counseling services actually provided by the licensee. Nothing in this subdivision shall prevent collaboration among two or more licensees in a case or cases. However, no fee shall be charged for that collaboration, except when disclosure of the fee has been made in compliance with subdivision (n).

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

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

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

(s) Performing or holding oneself out as being able to perform professional services beyond the scope of one's competence, as established by one's education, training, or experience. This subdivision shall not be construed to expand the scope of the license authorized by this chapter.

(t) Permitting a registered trainee or registered intern under one's supervision or control to perform, or permitting the registered trainee or registered intern to hold himself or herself out as competent to perform, professional services beyond the registered trainee's or registered intern's level of education, training, or experience.

(u) The violation of any statute or regulation governing the gaining and supervision of experience required by this chapter.

(v) Failure to keep records consistent with sound clinical judgment, the standards of the profession, and the nature of the services being rendered.

SEC. 36. Section 4982.2 of the Business and Professions Code is amended to read:

4982.2. (a) A licensed marriage and family therapist, licensed clinical social worker, or educational psychologist whose license has been revoked or suspended or who has been placed on probation may petition the board for reinstatement or modification of penalty, including modification or termination of probation, after a period not less than the following minimum periods has elapsed from the effective date of the decision ordering the disciplinary action, or if the order of the board, or any portion of it, is stayed by the board itself, or by the superior court, from the date the disciplinary action is actually implemented in its entirety:

(1) At least three years for reinstatement of a license that was revoked for unprofessional conduct, except that the board may, in its sole discretion at the time of adoption, specify in its order that a petition for reinstatement may be filed after two years.

(2) At least two years for early termination of any probation period of three years, or more.

(3) At least one year for modification of a condition, or reinstatement of a license revoked for mental or physical illness, or termination of probation of less than three years.

(b) The petition may be heard by the board itself, or the board may assign the petition to an administrative law judge pursuant to Section 11512 of the Government Code. 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 production and proof to establish by clear and convincing evidence that he or she is entitled to the relief sought in the petition. The board, when it is hearing the petition itself, or an administrative law judge sitting for the board, may consider all activities of the petitioner since the disciplinary action was taken, the offense for which the petitioner was disciplined, the petitioner's activities during the time his or her license was in good standing, and the petitioner's rehabilitative efforts, general reputation for truth, and professional ability.

(c) The hearing may be continued from time to time as the board or the administrative law judge deems appropriate.

(d) 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. In a decision granting a petition reinstating a license or modifying a penalty, the board itself, or the administrative law judge may impose any terms and conditions that the agency deems reasonably appropriate, including those set forth in Sections 823 and 4982.15. Where a petition is heard by an administrative law judge sitting alone, the administrative law judge shall prepare a proposed decision and submit it to the board.

(e) The board may take such action with respect to the proposed decision and petition as it deems appropriate.

(f) The petition shall be on a form provided by the board, and shall state any facts and information as may be required by the board including, but not limited to, proof of compliance with the terms and conditions of the underlying disciplinary order.

(g) The petitioner shall pay a fingerprinting fee and provide a current set of his or her fingerprints to the board. The petitioner shall execute a form authorizing release to the board or its designee, of all information concerning the petitioner's current physical and mental condition. Information provided to the board pursuant to the release shall be confidential and shall not be subject to discovery or subpoena in any

other proceeding, and shall not be admissible in any action, other than before the board, to determine the petitioner's fitness to practice as required by Section 822.

(h) The petition shall be verified by the petitioner, who shall file an original and sufficient copies of the petition, together with any supporting documents, for the members of the board, the administrative law judge, and the Attorney General.

(i) The board may delegate to its executive officer authority to order investigation of the contents of the petition, but in no case, may the hearing on the petition be delayed more than 180 days from its filing without the consent of the petitioner.

(j) The petitioner may request that the board schedule the hearing on the petition for a board meeting at a specific city where the board regularly meets.

(k) 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 as a mentally disordered sex offender 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.

(*l*) Except in those cases where the petitioner has been disciplined for violation of Section 822, the board may in its discretion deny without hearing or argument any petition that is filed pursuant to this section within a period of two years from the effective date of a prior decision following a hearing under this section.

SEC. 37. Section 4982.25 of the Business and Professions Code is amended to read:

4982.25. The board may deny any application, or may suspend or revoke any license or registration issued under this chapter, for any of the following:

(a) Denial of licensure, revocation, suspension, restriction, or any other disciplinary action imposed by another state or territory or possession of the United States, or by any other governmental agency, on a license, certificate, or registration to practice marriage and family therapy, or any other healing art, shall constitute unprofessional conduct. A certified copy of the disciplinary action decision or judgment shall be conclusive evidence of that action.

(b) Revocation, suspension, or restriction by the board of a license, certificate, or registration to practice as a clinical social worker or educational psychologist shall also constitute grounds for disciplinary action for unprofessional conduct against the licensee or registrant under this chapter.

SEC. 38. Section 4984.7 of the Business and Professions Code is amended to read:

4984.7. The amount of the fees prescribed by this chapter that relate to licensing of persons to engage in the business of marriage and family therapy is that established by the following schedule:

(a) The fee for applications for examination received on or after January 1, 1987, shall be one hundred dollars ($100).

(b) The fee for issuance of the initial license shall be a maximum of one hundred eighty dollars ($180).

(c) For those persons whose license expires on or after January 1, 1996, the renewal fee shall be a maximum of one hundred eighty dollars ($180).

(d) The delinquency fee shall be ninety dollars ($90). Any person who permits his or her license to become delinquent may have it restored only upon the payment of all fees that he or she would have paid if the license had not become delinquent, plus the payment of any and all outstanding delinquency fees.

(e) For those persons registering as interns on or after January 1, 1996, the registration fee shall be ninety dollars ($90).

(f) For those persons whose registration as an intern expires on or after January 1, 1996, the renewal fee shall be seventy-five dollars ($75).

(g) The written examination fee shall be one hundred dollars ($100). After successfully passing the written examination, each applicant for oral examination shall submit two hundred dollars ($200). Applicants failing to appear for any examination, once having been scheduled, shall forfeit any examination fees paid.

(h) An applicant who fails any written or oral examination may within one year from the notification date of that failure, retake the examination as regularly scheduled without further application upon payment of one hundred dollars ($100) for the written reexamination and two hundred dollars ($200) for the oral reexamination. Thereafter, the applicant shall not be eligible for further examination until he or she files a new application, meets all current requirements, and pays all fees required. Persons failing to appear for the reexamination, once having been scheduled, shall forfeit any reexamination fees paid.

(i) The fee for rescoring a written examination shall be twenty dollars ($20). The fee for appeal of an oral examination shall be one hundred dollars ($100).

(j) The fee for issuance of any replacement registration, license, or certificate shall be twenty dollars ($20).

(k) The fee for issuance of a certificate or letter of good standing shall be twenty-five dollars ($25).

With regard to all license, examination, and other fees, the board shall establish fee amounts at or below the maximum amounts specified in this chapter.

SEC. 39. Section 4984.8 of the Business and Professions Code is amended to read:

4984.8. A licensed marriage and family therapist may apply to the board to request that his or her license be placed on inactive status. Licensees who hold an inactive license shall pay a biennial fee of half of the active renewal fee. Licensees holding an inactive license shall be exempt from continuing education requirements specified in Section 4980.54, but shall otherwise be subject to this chapter and shall not engage in the practice of marriage and family therapy in this state. Licensees on inactive status who have not committed any acts or crimes constituting grounds for denial of licensure and have completed any required continuing education equivalent to that required for a single renewal period may, upon their request, have their license to practice marriage and family therapy placed on active status. Licensees requesting their license be placed on active status at any time between a renewal cycle shall pay the remaining half of their renewal fee.

SEC. 40. Section 4986.70 of the Business and Professions Code is amended to read:

4986.70. The board may refuse to issue a license or may suspend or revoke the license of any licensee if he or she has been guilty of unprofessional conduct that has endangered or is likely to endanger the health, welfare, or safety of the public. Unprofessional conduct includes, but is not limited to, the following:

(a) Conviction of a crime substantially related to the qualifications, functions and duties of an educational psychologist, the record of conviction being conclusive evidence thereof.

(b) Securing a license by fraud or deceit.

(c) Using any narcotic as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code or any hypnotic drug or alcoholic beverage to an extent or in a manner dangerous to himself or herself, or to any other person, or to the public and to an extent that the action impairs his or her ability to perform his or her work as a licensed educational psychologist with safety to the public.

(d) Improper advertising.

(e) Violating or conspiring to violate the terms of this article.

(f) Committing a dishonest or fraudulent act as a licensed educational psychologist resulting in substantial injury to another.

(g) Denial of licensure, revocation, suspension, restriction, or any other disciplinary action imposed by another state or territory or possession of the United States, or by any other governmental agency, on a license, certificate, or registration to practice educational psychology or any other healing art, shall constitute unprofessional conduct. A certified copy of the disciplinary action, decision, or judgment shall be conclusive evidence of that action.

(h) Revocation, suspension, or restriction by the board of a license, certificate, or registration to practice as a clinical social worker or marriage and family therapist shall constitute grounds for disciplinary action for unprofessional conduct against the licensee or registrant under this chapter.

(i) Failure to keep records consistent with sound clinical judgment, the standards of the profession, and the nature of the services being rendered.

(j) Gross negligence or incompetence in the performance of licensed educational psychology.

SEC. 41. Section 4987.5 of the Business and Professions Code is amended to read:

4987.5. A marriage and family therapy corporation is a corporation that is authorized to render professional services, as defined in Section 13401 of the Corporations Code, so long as that corporation and its shareholders, officers, directors, and employees rendering professional services who are marriage and family therapists, physicians and surgeons, psychologists, licensed clinical social workers, registered nurses, chiropractors, or acupuncturists are in compliance with the Moscone-Knox Professional Corporation Act (Part 4 (commencing with Section 13400) of Division 3 of Title 1 of the Corporations Code), this article, and any other statute or regulation pertaining to that corporation and the conduct of its affairs. With respect to a marriage and family therapy corporation, the governmental agency referred to in the Moscone-Knox Professional Corporation Act is the Board of Behavioral Sciences.

SEC. 42. Section 4987.7 of the Business and Professions Code is amended to read:

4987.7. The name of a marriage and family therapy corporation shall contain one or more of the words ''marriage,'' ''family,'' and ''child'' together with one or more of the words ''counseling,'' ''counselor,'' or ''therapist,'' and wording or abbreviations denoting corporate existence. A marriage and family therapy corporation that conducts business under a fictitious business name shall not use any name that is false, misleading or deceptive, and shall inform the patient, prior to the commencement of treatment, that the business is conducted by a marriage and family therapy corporation.

SEC. 43. Section 4987.8 of the Business and Professions Code is amended to read:

4987.8. Except as provided in Section 13403 of the Corporations Code, each director, shareholder, and officer of a marriage and family therapy corporation shall be a licensed person as defined in the Moscone-Knox Professional Corporation Act.

SEC. 44. Section 4988 of the Business and Professions Code is amended to read:

4988. The income of a marriage and family therapy corporation attributable to professional services rendered while a shareholder is a disqualified person (as defined in the Moscone-Knox Professional Corporation Act) shall not in any manner accrue to the benefit of that shareholder or his or her shares in the marriage and family therapy corporation.

SEC. 45. Section 4988.1 of the Business and Professions Code is amended to read:

4988.1. A marriage and family therapy corporation shall not do or fail to do any act the doing of which or the failure to do which would constitute unprofessional conduct under any statute, rule or regulation now or hereafter in effect. In the conduct of its practice, it shall observe and be bound by statutes, rules and regulations to the same extent as a person holding a license as a marriage and family therapist.

SEC. 46. Section 4988.2 of the Business and Professions Code is amended to read:

4988.2. The board may formulate and enforce rules and regulations to carry out the purposes and objectives of this article, including rules and regulations requiring (a) that the articles of incorporation or bylaws of a marriage and family therapy corporation shall include a provision whereby the capital stock of the corporation owned by a disqualified person (as defined in the Moscone-Knox Professional Corporation Act), or a deceased person, shall be sold to the corporation or to the remaining shareholders of the corporation within the time that rules and regulations may provide, and (b) that a marriage and family therapy corporation shall provide adequate security by insurance or otherwise for claims against it by its patients arising out of the rendering of professional services.

SEC. 47. Section 4990.3 of the Business and Professions Code is amended to read:

4990.3. Two members of the board shall be state-licensed clinical social workers, one shall be a licensed educational psychologist, two shall be state-licensed marriage and family therapists, and six shall be public members. Each member, except the six public members, shall hold at least a master's degree from an accredited college or university and shall have at least two years of experience in his or her profession.

SEC. 48. Section 4992.36 of the Business and Professions Code is amended to read:

4992.36. The board may deny any application, or may suspend or revoke any license or registration issued under this chapter, for any of the following:

(a) Denial of licensure, revocation, suspension, restriction, or any other disciplinary action imposed by another state or territory of the United States, or by any other governmental agency, on a license, certificate, or registration to practice clinical social work or any other healing art shall constitute grounds for disciplinary action for unprofessional conduct. A certified copy of the disciplinary action decision or judgment shall be conclusive evidence of that action.

(b) Revocation, suspension, or restriction by the board of a license, certificate, or registration to practice marriage and family therapy, or educational psychology against a licensee or registrant shall also constitute grounds for disciplinary action for unprofessional conduct under this chapter.

SEC. 49. Section 4996.13 of the Business and Professions Code is amended to read:

4996.13. Nothing in this article shall prevent qualified members of other professional groups from doing work of a psychosocial nature consistent with the standards and ethics of their respective professions. However, they shall not hold themselves out to the public by any title or description of services incorporating the words psychosocial, or clinical social worker, or that they shall not state or imply that they are licensed to practice clinical social work. These qualified members of other professional groups include, but are not limited to, the following:

(a) A physician and surgeon certified pursuant to Chapter 5 (commencing with Section 2000).

(b) A psychologist licensed pursuant to Chapter 6.6 (commencing with Section 2900).

(c) Members of the State Bar of California.

(d) Marriage and family therapists licensed pursuant to Chapter 13 (commencing with Section 4980).

(e) A priest, rabbi, or minister of the gospel of any religious denomination.

SEC. 50. Section 4998 of the Business and Professions Code is amended to read:

4998. A licensed clinical social worker corporation is a corporation that is authorized to render professional services, as defined in Section 13401 of the Corporations Code, so long as that corporation and its shareholders, officers, directors, and employees rendering professional services who are licensed clinical social workers, physicians and surgeons, psychologists, marriage and family therapists, registered nurses, chiropractors, or acupuncturists are in compliance with the Moscone-Knox Professional Corporation Act (Part 4 (commencing with Section 13400) of Division 3 of Title 1 of the Corporations Code), this article, and all other statutes and regulations now or hereafter enacted or adopted pertaining to that corporation and the conduct of its affairs. With

respect to a licensed clinical social worker corporation, the governmental agency referred to in the Moscone-Knox Professional Corporation Act is the Board of Behavioral Sciences.

SEC. 51. 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 and family therapist 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. 52. Section 6704 of the Business and Professions Code is amended to read:

6704. In order to safeguard life, health, property, and public welfare, no person shall practice civil, electrical, or mechanical engineering unless appropriately registered or specifically exempted from registration under this chapter, and only persons registered under this chapter shall be entitled to take and use the titles ''consulting engineer,'' ''professional engineer,'' or ''registered engineer,'' or any combination of those titles, and according to registration with the board the engineering branch titles specified in Section 6732, or the authority titles specified in Sections 6736 and 6736.1, or ''engineer-in-training.''

The provisions of this act pertaining to registration of professional engineers other than civil engineers, do not apply to employees in the communication industry; nor to the employees of contractors while engaged in work on communication equipment; however, those employees may not use any of the titles listed in Section 6732 unless registered.

The provisions of this section shall not prevent the use of the title ''consulting engineer'' by a person who has qualified for and maintained exemption for using that title under the provisions of Section 6732.1, or by a person licensed as a photogrammetric surveyor.

SEC. 52.5. Section 6706 of the Business and Professions Code is amended to read:

6706. (a) An engineer who voluntarily, without compensation or expectation of compensation, provides structural inspection services at the scene of a declared national, state, or local emergency at the request of a public official, public safety officer, or city or county building inspector acting in an official capacity shall not be liable in negligence for any personal injury, wrongful death, or property damage caused by the engineer's good faith but negligent inspection of a structure used for human habitation or owned by a public entity for structural integrity or nonstructural elements affecting life and safety.

The immunity provided by this section shall apply only for an inspection that occurs within 30 days of the declared emergency.

Nothing in this section shall provide immunity for gross negligence or willful misconduct.

(b) As used in this section:

(1) ''Engineer'' means a person registered under this chapter as a professional engineer, including any of the branches thereof.

(2) ''Public safety officer'' has the meaning given in Section 3301 of the Government Code.

(3) ''Public official'' means a state or local elected officer.

SEC. 53. Section 6728.3 of the Business and Professions Code is amended to read:

6728.3. Except as otherwise provided in this article, all hearings which are conducted by a committee shall be conducted in accordance with the provisions of Chapter 4 (commencing with Section 11370), Chapter 4.5 (commencing with Section 11400) and Chapter 5 (commencing with Section 11500), Part 1, Division 3, Title 2 of the Government Code.

If a contested case is heard by a committee, the hearing officer who presided at the hearing shall be present during the committee's consideration of the case and, if requested, shall assist and advise the committee.

SEC. 54. Section 6728.5 of the Business and Professions Code is amended to read:

6728.5. The board may adopt, amend, or repeal, in accordance with the provisions of Chapter 3.5 (commencing with Section 11340), Part 1, Division 3, Title 2 of the Government Code, rules and regulations necessary to implement these sections.

SEC. 55. Section 6756 of the Business and Professions Code is amended to read:

6756. (a) An applicant for certification as an engineer-in-training shall, upon making a passing grade in that division of the examination prescribed in Section 6755, relating to fundamental engineering subjects, be issued a certificate as an engineer-in-training. A renewal or other fee, other than the application fee, may not be charged for this certification. The certificate shall become invalid when the holder has qualified as a professional engineer as provided in Section 6762.

(b) An engineer-in-training certificate does not authorize the holder thereof to practice or offer to practice civil, electrical, or mechanical engineering work, in his or her own right, or to use the titles specified in Sections 6732, 6736, and 6736.1.

(c) A person may not use the title of engineer-in-training, or any abbreviation of that title, unless he or she is the holder of a valid engineer-in-training certificate.

SEC. 56. Section 6787 of the Business and Professions Code is amended to read:

6787. Every person is guilty of a misdemeanor:

(a) Who, unless he or she is exempt from registration under this chapter, practices or offers to practice civil, electrical, or mechanical engineering in this state according to the provisions of this chapter without legal authorization.

(b) Who presents or attempts to file as his or her own the certificate of registration of a licensed professional engineer unless he or she is the person named on the certificate of registration.

(c) Who gives false evidence of any kind to the board, or to any member thereof, in obtaining a certificate of registration.

(d) Who impersonates or uses the seal of a licensed professional engineer.

(e) Who uses an expired, suspended, or revoked certificate issued by the board.

(f) Who represents himself or herself as, or uses the title of, registered civil, electrical, or mechanical engineer, or any other title whereby that person could be considered as practicing or offering to practice civil, electrical, or mechanical engineering in any of its branches, unless he or she is correspondingly qualified by registration as a civil, electrical, or mechanical engineer under this chapter.

(g) Who, unless appropriately registered, manages, or conducts as manager, proprietor, or agent, any place of business from which civil, electrical, or mechanical engineering work is solicited, performed, or practiced, except as authorized pursuant to subdivision (d) of Section 6738 and Section 8726.1.

(h) Who uses the title, or any combination of that title, of ''professional engineer,'' ''licensed engineer,'' ''registered engineer,'' or the branch titles specified in Section 6732, or the authority titles specified in Sections 6736 and 6736.1, or ''engineer-in-training,'' or who makes use of any abbreviation of that title that might lead to the belief that he or she is a registered engineer or holds a certificate as an engineer-in-training, without being registered or certified as required by this chapter.

(i) Who uses the title ''consulting engineer'' without being registered as required by this chapter or without being authorized to use that title pursuant to legislation enacted at the 1963, 1965 or 1968 Regular Session.

(j) Who violates any provision of this chapter.

SEC. 57. Section 6788 of the Business and Professions Code is amended to read:

6788. Any person who violates any provision of subdivisions (a) to (i), inclusive, of Section 6787 in connection with the offer or performance of engineering services for the repair of damage to a residential or nonresidential structure caused by a disaster 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, shall be punished by a fine up to ten thousand dollars ($10,000), or by imprisonment in the state prison for 16 months, or for two or three years, or by both the fine and imprisonment, or by a fine up to one thousand dollars ($1,000), or by imprisonment in the county jail not exceeding one year, or by both the fine and imprisonment.

SEC. 58. Section 6980.12 of the Business and Professions Code is amended to read:

6980.12. This chapter does not apply to the following persons:

(a) Any person, or his or her agent or employee, who is the manufacturer of a product, other than locks and keys, and who installs, repairs, opens, or modifies locks or who makes keys for the locks of that product as a normal incident to its marketing.

(b) Employees who are industrial or institutional locksmiths, provided that the employees provide locksmith services only to a single employer that does not provide locksmith services for hire to the public.

(c) Tow truck operators who do not originate keys for locks and whose locksmith services are limited to motor vehicles.

(d) Any person employed exclusively and regularly by a state correctional institution.

(e) Any person registered with the bureau pursuant to Chapter 11 (commencing with Section 7500) if the duties of that person's position that constitute locksmithing are ancillary to the primary duties and functions of that person's position.

(f) Any agent or employee of a retail establishment that has a primary business other than providing locksmith services, providing all of the following criteria are met:

(1) The services provided by the retail establishment are limited to rekeying and recombination of locks.

(2) All rekeying, recombination, and installation of locks must take place on the premises of the retail establishment.

(3) All rekeying, recombination, and installation services provided by the retail establishment subject to this chapter are limited to locks purchased on the retail establishment's premises and are conducted prior to purchasers taking possession of the locks.

(4) No unlicensed agent or employee of the retail establishment shall advertise or represent himself or herself to be licensed under this chapter, and no agent or employee of the retail establishment shall advertise or represent himself or herself to be a locksmith.

(5) No agent or employee of the retail establishment shall design or implement a master key system, as defined in subdivision (o) of Section 6980.

(6) No agent or employee of the retail establishment shall rekey, change the combination of, alter, or install any automotive locks.

(7) The retail establishment shall not have on its premises any locksmith tool, as defined in subdivision (s) of Section 6980, other than the following:

(A) Key duplication machines.

(B) Key blanks.

(C) Pin kits.

(g) Any law enforcement officer employed by any city, county, city and county, state, or federal law enforcement agency, if all services are performed during the course of the officer's professional duties.

(h) Firefighters or emergency medical personnel employed by any city, county, city and county, district, or state agency, if all services are performed during the course of duties as a firefighter or emergency medical person.

(i) A new motor vehicle dealer, as defined in Section 426 of the Vehicle Code, and employees of a new motor vehicle dealer acting within the scope of employment at a dealership.

SEC. 59. Section 7019 of the Business and Professions Code is amended to read:

7019. (a) If funding is made available for that purpose, the board may contract with licensed professionals, as appropriate, for the site investigation of consumer complaints.

(b) The board may contract with other professionals, including, but not limited to, interpreters and manufacturer's representatives, whose skills or expertise are required to aid in the investigation or prosecution of a licensee, registrant, applicant for a license or registration, or those subject to licensure or registration by the board.

(c) The registrar shall determine the rate of reimbursement for those individuals providing assistance to the board pursuant to this section. All reports shall be completed on a form prescribed by the registrar.

(d) As used in this section, ''licensed professionals'' means, but is not limited to, engineers, architects, landscape architects, geologists, and accountants licensed, certificated, or registered pursuant to this division.

SEC. 60. Section 7057 of the Business and Professions Code is amended to read:

7057. (a) Except as provided in this section, a general building contractor is a contractor whose principal contracting business is in connection with any structure built, being built, or to be built, for the support, shelter, and enclosure of persons, animals, chattels, or movable property of any kind, requiring in its construction the use of at least two unrelated building trades or crafts, or to do or superintend the whole or any part thereof.

This does not include anyone who merely furnishes materials or supplies under Section 7045 without fabricating them into, or consuming them in the performance of the work of the general building contractor.

(b) A general building contractor may take a prime contract or a subcontract for a framing or carpentry project. However, a general building contractor shall not take a prime contract for any project involving trades other than framing or carpentry unless the prime contract requires at least two unrelated building trades or crafts other

than framing or carpentry, or unless the general building contractor holds the appropriate license classification or subcontracts with an appropriately licensed contractor to perform the work. A general building contractor shall not take a subcontract involving trades other than framing or carpentry, unless the subcontract requires at least two unrelated trades or crafts other than framing or carpentry, or unless the general building contractor holds the appropriate license classification. The general building contractor may not count framing or carpentry in calculating the two unrelated trades necessary in order for the general building contractor to be able to take a prime contract or subcontract for a project involving other trades.

(c) No general building contractor shall contract for any project that includes the ''C-16'' Fire Protection classification as provided for in Section 7026.12 or the ''C-57'' Well Drilling classification as provided for in Section 13750.5 of the Water Code, unless the general building contractor holds the appropriate license classification, or subcontracts with the appropriately licensed contractor.

SEC. 61. Section 7058.1 of the Business and Professions Code is repealed.

SEC. 61.3. Section 7106.5 of the Business and Professions Code is amended to read:

7106.5. The expiration, cancellation, forfeiture, or suspension of a license by operation of law or by order or decision of the registrar or a court of law, or the voluntary surrender of a license by a licensee shall not deprive the registrar of jurisdiction to proceed with any investigation of or action or disciplinary proceeding against the license, or to render a decision suspending or revoking the license.

SEC. 61.5. Section 7110 of the Business and Professions Code is amended to read:

7110. Willful or deliberate disregard and violation of the building laws of the state, or of any political subdivision thereof, or of Section 8505 or 8556 of this code, or of Sections 1689.5 to 1689.8, inclusive, or Sections 1689.10 to 1689.13, inclusive, of the Civil Code, or of the safety laws or labor laws or compensation insurance laws or Unemployment Insurance Code of the state, or violation by any licensee of any provision of the Health and Safety Code or Water Code, relating to the digging, boring, or drilling of water wells, or Article 2 (commencing with Section 4216) of Chapter 3.1 of Division 5 of Title 1 of the Government Code, constitutes a cause for disciplinary action.

SEC. 62. Section 7141 of the Business and Professions Code is amended to read:

7141. Except as otherwise provided in this chapter, a license that has expired may be renewed at any time within three years after its expiration by filing an application for renewal on a form prescribed by the registrar,

and payment of the appropriate renewal fee. Renewal under this section shall be effective on the date an acceptable renewal application is filed with the board. The licensee shall be considered unlicensed and there will be a break in the licensing time between the expiration date and the date the renewal becomes effective. If the license is renewed after the expiration date, the licensee shall also pay the delinquency fee prescribed by this chapter. If so renewed, the license shall continue in effect through the date provided in Section 7140 which next occurs after the effective date of the renewal, when it shall expire if it is not again renewed.

If a license is not renewed within three years, the licensee shall make application for a license pursuant to Section 7066.

SEC. 63. Section 8698.6 of the Business and Professions Code is amended to read:

8698.6. This chapter shall remain in effect only until July 1, 2006, and as of that date is repealed, unless a later enacted statute, which is chaptered before July 1, 2006, deletes or extends that date.

SEC. 64. Section 8720.3 of the Business and Professions Code is amended to read:

8720.3. Except as otherwise provided in this article, all hearings which are conducted by a committee shall be conducted in accordance with the provisions of Chapter 4 (commencing with Section 11370), Chapter 4.5 (commencing with Section 11400), and Chapter 5 (commencing with Section 11500), Part 1, Division 3, Title 2 of the Government Code.

If a contested case is heard by a committee, the hearing officer who presided at the hearing shall be present during the committee's consideration of the case and, if requested, shall assist and advise the committee.

SEC. 65. Section 8720.5 of the Business and Professions Code is amended to read:

8720.5. The board may adopt, amend, or repeal, in accordance with the provisions of Chapter 3.5 (commencing with Section 11340), Part 1, Division 3, Title 2 of the Government Code, rules and regulations necessary to implement the provisions of this article.

SEC. 66. Section 8751 of the Business and Professions Code is amended to read:

8751. No person shall represent himself or herself as, or use the title of, or any abbreviation or combination of the words in the title of, professional land surveyor, licensed land surveyor, land surveyor, land survey engineer, survey engineer, geodetic engineer, geomatics engineer, or geometronic engineer unless he or she is the holder of a valid, unsuspended, and unrevoked license.

SEC. 67. Section 8762 of the Business and Professions Code is amended to read:

8762. (a) After making a field survey in conformity with the practice of land surveying, the licensed surveyor or licensed civil engineer may file with the county surveyor in the county in which the survey was made, a record of the survey.

(b) After making a field survey in conformity with the practice of land surveying, the licensed land surveyor or licensed civil engineer shall file with the county surveyor in the county in which the field survey was made a record of the survey relating to land boundaries or property lines, if the field survey discloses any of the following:

(1) Material evidence or physical change, which in whole or in part does not appear on any subdivision map, official map, or record of survey previously recorded or properly filed in the office of the county recorder or county surveying department, or map or survey record maintained by the Bureau of Land Management of the United States.

(2) A material discrepancy with the information contained in any subdivision map, official map, or record of survey previously recorded or filed in the office of the county recorder or the county surveying department, or any map or survey record maintained by the Bureau of Land Management of the United States. For purposes of this subdivision, a ''material discrepancy'' is limited to a material discrepancy in the position of points or lines, or in dimensions.

(3) Evidence that, by reasonable analysis, might result in materially alternate positions of lines or points, shown on any subdivision map, official map, or record of survey previously recorded or filed in the office of the county recorder or the county surveying department, or any map or survey record maintained by the Bureau of Land Management of the United States.

(4) The establishment of one or more points or lines not shown on any subdivision map, official map, or record of survey, the positions of which are not ascertainable from an inspection of the subdivision map, official map, or record of survey.

(5) The points or lines set during the performance of a field survey of any parcel described in any deed or other instrument of title recorded in the county recorder's office are not shown on any subdivision map, official map, or record of survey.

(c) The record of survey required to be filed pursuant to this section shall be filed within 90 days after the setting of boundary monuments during the performance of a field survey or within 90 days after completion of a field survey, whichever occurs first.

(d) If the 90-day time limit contained in this section cannot be complied with for reasons beyond the control of the licensed land surveyor or licensed civil engineer, the 90-day time period shall be

extended until the time at which the reasons for delay are eliminated. If the licensed land surveyor or licensed civil engineer cannot comply with the 90-day time limit, he or she shall, prior to the expiration of the 90-day time limit, provide the county surveyor with a letter stating that he or she is unable to comply. The letter shall provide an estimate of the date for completion of the record of survey, the reasons for the delay, and a general statement as to the location of the survey, including the assessor's parcel number or numbers.

(e) The licensed land surveyor or licensed civil engineer shall not initially be required to provide specific details of the survey. However, if other surveys at the same location are performed by others which may affect or be affected by the survey, the licensed land surveyor or licensed civil engineer shall then provide information requested by the county surveyor without unreasonable delay.

(f) Any record of survey filed with the county surveyor shall, after being examined by him or her, be filed with the county recorder.

(g) If the preparer of the record of survey provides a postage-paid, self-addressed envelope or postcard with the filing of the record of survey, the county recorder shall return the postage-paid, self-addressed envelope or postcard to the preparer of the record of survey with the filing data within 10 days of final filing. For the purposes of this subdivision, "filing data" includes the date, the book or volume, and the page at which the record of survey is filed by the county surveyor.

SEC. 68. Section 8763 of the Business and Professions Code is amended to read:

8763. The record of survey shall be a map, legibly drawn, printed, or reproduced by a process guaranteeing a permanent record in black on tracing cloth, or polyester base film, 18 by 26 inches or 460 by 660 millimeters. If ink is used on polyester base film, the ink surface shall be coated with a suitable substance to assure permanent legibility. A marginal line shall be drawn completely around each sheet leaving an entirely blank margin of one inch or 25 millimeters.

SEC. 69. Section 8764.5 of the Business and Professions Code is amended to read:

8764.5. Statements shall appear on the map as follows:

SURVEYOR'S STATEMENT

This map correctly represents a survey made by me or under my direction in conformance with the requirements of the Professional Land Surveyors' Act at the request of _____

Name of Person Authorizing Survey

in ____, 20__.

(Signed and sealed) _____
L.S. (or R.C.E.) No. _____
License expiration date _____

COUNTY SURVEYOR'S STATEMENT

This map has been examined in accordance with Section 8766 of the Professional Land Surveyors' Act this ____ day of ____, 20__.

(Signed and sealed) _____
County Surveyor
L.S. (or R.C.E.) No. _____
License expiration date _____

RECORDER'S STATEMENT

Filed this ____ day of ____, 20__, at ____.m. in Book ____ of ____ at page ____, at the request of ____.
(Signed) _____
County Recorder

No other statements may appear on the face of the map except those required or authorized by this article.

SEC. 70. Section 8773.2 of the Business and Professions Code is amended to read:

8773.2. (a) A ''corner record'' submitted to the county surveyor or engineer shall be examined by him or her for compliance with subdivision (d) of Section 8765 and Sections 8773, 8773.1, and 8773.4, endorsed with a statement of his or her examination, and filed with the county surveyor or returned to the submitting party within 20 working days after receipt.

(b) In the event the submitted ''corner record'' fails to comply with the examination criteria of subdivision (a), the county surveyor or engineer shall return it to the person who submitted it together with a written statement of the changes necessary to make it conform to the requirements of subdivision (a). The licensed land surveyor or licensed civil engineer submitting the corner record may then make the changes in compliance with subdivision (a) and resubmit the corner record for filing. The county surveyor or engineer shall file the corner record within 10 working days after receipt of the resubmission.

(c) If the matters appearing on the corner record cannot be agreed upon by the licensed land surveyor or the licensed civil engineer and the county surveyor within 10 working days after the licensed land surveyor or licensed civil engineer resubmits and requests the corner record be filed without further change, an explanation of the differences shall be noted on the corner record and it shall be submitted to and filed by the

county surveyor. When the county surveyor places an explanatory note on a corner record, the county surveyor shall transmit a copy of the filed corner record within 10 working days of the filing to the licensed land surveyor or licensed civil engineer who submitted the corner record.

(d) The corner record filed with the county surveyor of any county shall be securely fastened by him or her into a suitable book provided for that purpose.

(e) A charge for examining, indexing, and filing the corner record may be collected by the county surveyor, not to exceed the amount required for the recording of a deed.

(f) If the preparer of the corner record provides a postage-paid, self-addressed envelope or postcard with the filing of the corner record, the county surveyor shall return the postage-paid, self-addressed envelope or postcard to the preparer of the corner record with the filing data within 20 days of final filing. For the purposes of this subdivision, ''filing data'' includes the date, book or volume, and the page at which the corner record is filed by the county surveyor. This subdivision shall not apply to a county surveyor's office that maintains an electronic database of filed corner records that is accessible to the public by reference to the preparer's license number.

SEC. 71. Section 8773.4 of the Business and Professions Code is amended to read:

8773.4. (a) A corner record shall be signed by a licensed land surveyor or licensed civil engineer and stamped with his or her seal, or in the case of an agency of the United States government or the State of California, the certificate may be signed by the chief of the survey party making the survey, setting forth his or her official title, prior to filing.

(b) A corner record need not be filed when:

(1) A corner record is on file and the corner is found as described in the existing corner record.

(2) All conditions of Section 8773 are complied with by proper notations on a record of survey map filed in compliance with the Professional Land Surveyors' Act or a parcel or subdivision map, in compliance with the Subdivision Map Act.

(3) When the survey is a survey of a mobilehome park interior lot as defined in Section 18210 of the Health and Safety Code, provided that no subdivision map, official map, or record of survey has been previously filed for the interior lot or no conversion to residential ownership has occurred pursuant to Section 66428.1 of the Government Code.

This section shall not apply to maps filed prior to January 1, 1974.

SEC. 72. Section 43.7 of the Civil Code is amended to read:

43.7. (a) There shall be no monetary liability on the part of, and no cause of action for damages shall arise against, any member of a duly

appointed mental health professional quality assurance committee that is established in compliance with Section 4070 of the Welfare and Institutions Code, for any act or proceeding undertaken or performed within the scope of the functions of the committee which is formed to review and evaluate the adequacy, appropriateness, or effectiveness of the care and treatment planned for, or provided to, mental health patients in order to improve quality of care by mental health professionals if the committee member acts without malice, has made a reasonable effort to obtain the facts of the matter as to which he or she acts, and acts in reasonable belief that the action taken by him or her is warranted by the facts known to him or her after the reasonable effort to obtain facts.

(b) There shall be no monetary liability on the part of, and no cause of action for damages shall arise against, any professional society, any member of a duly appointed committee of a medical specialty society, or any member of a duly appointed committee of a state or local professional society, or duly appointed member of a committee of a professional staff of a licensed hospital (provided the professional staff operates pursuant to written bylaws that have been approved by the governing board of the hospital), for any act or proceeding undertaken or performed within the scope of the functions of the committee which is formed to maintain the professional standards of the society established by its bylaws, or any member of any peer review committee whose purpose is to review the quality of medical, dental, dietetic, chiropractic, optometric, acupuncture, or veterinary services rendered by physicians and surgeons, dentists, dental hygienists, podiatrists, registered dietitians, chiropractors, optometrists, acupuncturists, veterinarians, or psychologists which committee is composed chiefly of physicians and surgeons, dentists, dental hygienists, podiatrists, registered dietitians, chiropractors, optometrists, acupuncturists, veterinarians, or psychologists for any act or proceeding undertaken or performed in reviewing the quality of medical, dental, dietetic, chiropractic, optometric, acupuncture, or veterinary services rendered by physicians and surgeons, dentists, dental hygienists, podiatrists, registered dietitians, chiropractors, optometrists, acupuncturists, veterinarians, or psychologists or any member of the governing board of a hospital in reviewing the quality of medical services rendered by members of the staff if the professional society, committee, or board member acts without malice, has made a reasonable effort to obtain the facts of the matter as to which he, she, or it acts, and acts in reasonable belief that the action taken by him, her, or it is warranted by the facts known to him, her, or it after the reasonable effort to obtain facts. ''Professional society'' includes legal, medical, psychological, dental, dental hygiene, dietetic, accounting, optometric, acupuncture, podiatric, pharmaceutic, chiropractic, physical therapist, veterinary, licensed

marriage and family therapy, licensed clinical social work, and engineering organizations having as members at least 25 percent of the eligible persons or licentiates in the geographic area served by the particular society. However, if the society has less than 100 members, it shall have as members at least a majority of the eligible persons or licentiates in the geographic area served by the particular society.

''Medical specialty society'' means an organization having as members at least 25 percent of the eligible physicians within a given professionally recognized medical specialty in the geographic area served by the particular society.

(c) This section does not affect the official immunity of an officer or employee of a public corporation.

(d) There shall be no monetary liability on the part of, and no cause of action for damages shall arise against, any physician and surgeon, podiatrist, or chiropractor who is a member of an underwriting committee of an interindemnity or reciprocal or interinsurance exchange or mutual company for any act or proceeding undertaken or performed in evaluating physicians and surgeons, podiatrists, or chiropractors for the writing of professional liability insurance, or any act or proceeding undertaken or performed in evaluating physicians and surgeons for the writing of an interindemnity, reciprocal, or interinsurance contract as specified in Section 1280.7 of the Insurance Code, if the evaluating physician or surgeon, podiatrist, or chiropractor acts without malice, has made a reasonable effort to obtain the facts of the matter as to which he or she acts, and acts in reasonable belief that the action taken by him or her is warranted by the facts known to him or her after the reasonable effort to obtain the facts.

(e) This section shall not be construed to confer immunity from liability on any quality assurance committee established in compliance with Section 4070 of the Welfare and Institutions Code or hospital. In any case in which, but for the enactment of the preceding provisions of this section, a cause of action would arise against a quality assurance committee established in compliance with Section 4070 of the Welfare and Institutions Code or hospital, the cause of action shall exist as if the preceding provisions of this section had not been enacted.

SEC. 73. Section 43.93 of the Civil Code is amended to read:

43.93. (a) For the purposes of this section the following definitions are applicable:

(1) ''Psychotherapy'' means the professional treatment, assessment, or counseling of a mental or emotional illness, symptom, or condition.

(2) ''Psychotherapist'' means a physician and surgeon specializing in the practice of psychiatry, a psychologist, a psychological assistant, a marriage and family therapist, a registered marriage and family therapist

intern or trainee, an educational psychologist, an associate clinical social worker, or a licensed clinical social worker.

(3) ''Sexual contact'' means the touching of an intimate part of another person. ''Intimate part'' and ''touching'' have the same meanings as defined in subdivisions (f) and (d), respectively, of Section 243.4 of the Penal Code. For the purposes of this section, sexual contact includes sexual intercourse, sodomy, and oral copulation.

(4) ''Therapeutic relationship'' exists during the time the patient or client is rendered professional service by the therapist.

(5) ''Therapeutic deception'' means a representation by a psychotherapist that sexual contact with the psychotherapist is consistent with or part of the patient's or former patient's treatment.

(b) A cause of action against a psychotherapist for sexual contact exists for a patient or former patient for injury caused by sexual contact with the psychotherapist, if the sexual contact occurred under any of the following conditions:

(1) During the period the patient was receiving psychotherapy from the psychotherapist.

(2) Within two years following termination of therapy.

(3) By means of therapeutic deception.

(c) The patient or former patient may recover damages from a psychotherapist who is found liable for sexual contact. It is not a defense to the action that sexual contact with a patient occurred outside a therapy or treatment session or that it occurred off the premises regularly used by the psychotherapist for therapy or treatment sessions. No cause of action shall exist between spouses within a marriage.

(d) In an action for sexual contact, evidence of the plaintiff's sexual history is not subject to discovery and is not admissible as evidence except in either of the following situations:

(1) The plaintiff claims damage to sexual functioning.

(2) The defendant requests a hearing prior to conducting discovery and makes an offer of proof of the relevancy of the history, and the court finds that the history is relevant and the probative value of the history outweighs its prejudicial effect.

The court shall allow the discovery or introduction as evidence only of specific information or examples of the plaintiff's conduct that are determined by the court to be relevant. The court's order shall detail the information or conduct that is subject to discovery.

SEC. 74. Section 43.95 of the Civil Code is amended to read:

43.95. (a) There shall be no monetary liability on the part of, and no cause of action for damages shall arise against, any professional society or any nonprofit corporation authorized by a professional society to operate a referral service, or their agents, employees, or members, for referring any member of the public to any professional member of the

society or service, or for acts of negligence or conduct constituting unprofessional conduct committed by a professional to whom a member of the public was referred, so long as any of the foregoing persons or entities has acted without malice, and the referral was made at no cost added to the initial referral fee as part of a public service referral system organized under the auspices of the professional society. Further, there shall be no monetary liability on the part of, and no cause of action for damages shall arise against, any professional society for providing a telephone information library available for use by the general public without charge, nor against any nonprofit corporation authorized by a professional society for providing a telephone information library available for use by the general public without charge. ''Professional society'' includes legal, psychological, architectural, medical, dental, dietetic, accounting, optometric, podiatric, pharmaceutic, chiropractic, veterinary, licensed marriage and family therapy, licensed clinical social work, and engineering organizations having as members at least 25 percent of the eligible persons or licentiates in the geographic area served by the particular society. However, if the society has less than 100 members, it shall have as members at least a majority of the eligible persons or licentiates in the geographic area served by the particular society. ''Professional society'' also includes organizations with referral services that have been authorized by the State Bar of California and operated in accordance with its Minimum Standards for a Lawyer Referral Service in California, and organizations that have been established to provide free assistance or representation to needy patients or clients.

(b) This section shall not apply whenever the professional society, while making a referral to a professional member of the society, fails to disclose the nature of any disciplinary action of which it has actual knowledge taken by a state licensing agency against that professional member. However, there shall be no duty to disclose a disciplinary action in either of the following cases:

(1) Where a disciplinary proceeding results in no disciplinary action being taken against the professional to whom a member of the public was referred.

(2) Where a period of three years has elapsed since the professional to whom a member of the public was referred has satisfied any terms, conditions, or sanctions imposed upon the professional as disciplinary action; except that if the professional is an attorney, there shall be no time limit on the duty to disclose.

SEC. 75. Section 13401.5 of the Corporations Code is amended to read:

13401.5. Notwithstanding subdivision (d) of Section 13401 and any other provision of law, the following licensed persons may be

shareholders, officers, directors, or professional employees of the professional corporations designated in this section so long as the sum of all shares owned by those licensed persons does not exceed 49 percent of the total number of shares of the professional corporation so designated herein, and so long as the number of those licensed persons owning shares in the professional corporation so designated herein does not exceed the number of persons licensed by the governmental agency regulating the designated professional corporation:

(a) Medical corporation.
(1) Licensed doctors of podiatric medicine.
(2) Licensed psychologists.
(3) Registered nurses.
(4) Licensed optometrists.
(5) Licensed marriage and family therapists.
(6) Licensed clinical social workers.
(7) Licensed physician assistants.
(8) Licensed chiropractors.
(9) Licensed acupuncturists.
(b) Podiatric medical corporation.
(1) Licensed physicians and surgeons.
(2) Licensed psychologists.
(3) Registered nurses.
(4) Licensed optometrists.
(5) Licensed chiropractors.
(6) Licensed acupuncturists.
(c) Psychological corporation.
(1) Licensed physicians and surgeons.
(2) Licensed doctors of podiatric medicine.
(3) Registered nurses.
(4) Licensed optometrists.
(5) Licensed marriage and family therapists.
(6) Licensed clinical social workers.
(7) Licensed chiropractors.
(8) Licensed acupuncturists.
(d) Speech-language pathology corporation.
(1) Licensed audiologists.
(e) Audiology corporation.
(1) Licensed speech-language pathologists.
(f) Nursing corporation.
(1) Licensed physicians and surgeons.
(2) Licensed doctors of podiatric medicine.
(3) Licensed psychologists.
(4) Licensed optometrists.
(5) Licensed marriage and family therapists.

(6) Licensed clinical social workers.
(7) Licensed physician assistants.
(8) Licensed chiropractors.
(9) Licensed acupuncturists.
(g) Marriage and family therapy corporation.
(1) Licensed physicians and surgeons.
(2) Licensed psychologists.
(3) Licensed clinical social workers.
(4) Registered nurses.
(5) Licensed chiropractors.
(6) Licensed acupuncturists.
(h) Licensed clinical social worker corporation.
(1) Licensed physicians and surgeons.
(2) Licensed psychologists.
(3) Licensed marriage and family therapists.
(4) Registered nurses.
(5) Licensed chiropractors.
(6) Licensed acupuncturists.
(i) Physician assistants corporation.
(1) Licensed physicians and surgeons.
(2) Registered nurses.
(3) Licensed acupuncturists.
(j) Optometric corporation.
(1) Licensed physicians and surgeons.
(2) Licensed doctors of podiatric medicine.
(3) Licensed psychologists.
(4) Registered nurses.
(5) Licensed chiropractors.
(6) Licensed acupuncturists.
(k) Chiropractic corporation.
(1) Licensed physicians and surgeons.
(2) Licensed doctors of podiatric medicine.
(3) Licensed psychologists.
(4) Registered nurses.
(5) Licensed optometrists.
(6) Licensed marriage and family therapists.
(7) Licensed clinical social workers.
(8) Licensed acupuncturists.
(*l*) Acupuncture corporation.
(1) Licensed physicians and surgeons.
(2) Licensed doctors of podiatric medicine.
(3) Licensed psychologists.
(4) Registered nurses.
(5) Licensed optometrists.

(6) Licensed marriage and family therapists.
(7) Licensed clinical social workers.
(8) Licensed physician assistants.
(9) Licensed chiropractors.

SEC. 76. Section 35160.5 of the Education Code is amended to read:

35160.5. (a) The governing board of each school district that maintains one or more schools containing any of grades 7 to 12, inclusive, shall, as a condition for the receipt of an inflation adjustment pursuant to Section 42238.1, establish a school district policy regarding participation in extracurricular and cocurricular activities by pupils in grades 7 to 12, inclusive. The criteria, which shall be applied to extracurricular and cocurricular activities, shall ensure that pupil participation is conditioned upon satisfactory educational progress in the previous grading period. Pupils who are eligible for differential standards of proficiency pursuant to subdivision (d) of Section 51215 are covered by this section consistent with that subdivision. No person shall classify a pupil as eligible for differential standards of proficiency pursuant to subdivision (d) of Section 51215 for the purpose of circumventing the intent of this subdivision.

(1) For purposes of this subdivision, ''extracurricular activity'' means a program that has all of the following characteristics:

(A) The program is supervised or financed by the school district.

(B) Pupils participating in the program represent the school district.

(C) Pupils exercise some degree of freedom in either the selection, planning, or control of the program.

(D) The program includes both preparation for performance and performance before an audience or spectators.

(2) For purposes of this subdivision, an ''extracurricular activity'' is not part of the regular school curriculum, is not graded, does not offer credit, and does not take place during classroom time.

(3) For purposes of this subdivision, a ''cocurricular activity'' is defined as a program that may be associated with the curriculum in a regular classroom.

(4) Any teacher graded or required program or activity for a course that satisfies the entrance requirements for admission to the California State University or the University of California is not an extracurricular or cocurricular activity as defined by this section.

(5) For purposes of this subdivision, ''satisfactory educational progress'' shall include, but not be limited to, the following:

(A) Maintenance of minimum passing grades, which is defined as at least a 2.0 grade point average in all enrolled courses on a 4.0 scale.

(B) Maintenance of minimum progress toward meeting the high school graduation requirements prescribed by the governing board.

(6) For purposes of this subdivision, ''previous grading period'' does not include any grading period in which the pupil was not in attendance for all, or a majority of, the grading period due to absences excused by the school for reasons such as serious illness or injury, approved travel, or work. In that event, ''previous grading period'' is deemed to mean the grading period immediately prior to the grading period or periods excluded pursuant to this paragraph.

(7) A program that has, as its primary goal, the improvement of academic or educational achievements of pupils is not an extracurricular or cocurricular activity as defined by this section.

(8) The governing board of each school district may adopt, as part of its policy established pursuant to this subdivision, provisions that would allow a pupil who does not achieve satisfactory educational progress, as defined in paragraph (4), in the previous grading period to remain eligible to participate in extracurricular and cocurricular activities during a probationary period. The probationary period shall not exceed one semester in length, but may be for a shorter period of time, as determined by the governing board of the school district. A pupil who does not achieve satisfactory educational progress, as defined in paragraph (4), during the probationary period shall not be allowed to participate in extracurricular and cocurricular activities in the subsequent grading period.

(9) Nothing in this subdivision shall preclude the governing board of a school district from imposing a more stringent academic standard than that imposed by this subdivision. If the governing board of a school district imposes a more stringent academic standard, the governing board shall establish the criteria for participation in extracurricular and cocurricular activities at a meeting open to the public pursuant to Section 35145.

The governing board of each school district shall annually review the school district policies adopted pursuant to the requirements of this section.

(b) (1) On or before July 1, 1994, the governing board of each school district shall, as a condition for the receipt of school apportionments from the state school fund, adopt rules and regulations establishing a policy of open enrollment within the district for residents of the district. This requirement does not apply to any school district that has only one school or any school district with schools that do not serve any of the same grade levels.

(2) The policy shall include all of the following elements:

(A) It shall provide that the parent or guardian of each schoolage child who is a resident in the district may select the schools the child shall attend, irrespective of the particular locations of his or her residence within the district, except that school districts shall retain the authority

to maintain appropriate racial and ethnic balances among their respective schools at the school districts' discretion or as specified in applicable court-ordered or voluntary desegregation plans.

(B) It shall include a selection policy for any school that receives requests for admission in excess of the capacity of the school that ensures that selection of pupils to enroll in the school is made through a random, unbiased process that prohibits an evaluation of whether any pupil should be enrolled based upon his or her academic or athletic performance. For purposes of this subdivision, the governing board of the school district shall determine the capacity of the schools in its district. However, school districts may employ existing entrance criteria for specialized schools or programs if the criteria are uniformly applied to all applicants. This subdivision shall not be construed to prohibit school districts from using academic performance to determine eligibility for, or placement in, programs for gifted and talented pupils established pursuant to Chapter 8 (commencing with Section 52200) of Part 28.

(C) It shall provide that no pupil who currently resides in the attendance area of a school shall be displaced by pupils transferring from outside the attendance area.

(3) Notwithstanding the requirement of subparagraph (B) of paragraph (2) that the policy include a selection policy for any school that receives requests for admission in excess of the capacity of the school that ensures that the selection is made through a random, unbiased process, the policy may include any of the following elements:

(A) It may provide that special circumstances exist that might be harmful or dangerous to a particular pupil in the current attendance area of the pupil, including, but not limited to, threats of bodily harm or threats to the emotional stability of the pupil, that serve as a basis for granting a priority of attendance outside the current attendance area of the pupil. A finding of harmful or dangerous special circumstances shall be based upon either of the following:

(i) A written statement from a representative of the appropriate state or local agency, including, but not limited to, a law enforcement official or a social worker, or properly licensed or registered professionals, including, but not limited to, psychiatrists, psychologists, or marriage and family therapists.

(ii) A court order, including a temporary restraining order and injunction, issued by a judge.

A finding of harmful or dangerous special circumstances pursuant to this subparagraph may be used by a school district to approve transfers within the district to schools that have been deemed by the school district to be at capacity and otherwise closed to transfers that are not based on harmful or dangerous special circumstances.

(B) It may provide that any pupil attending a school prior to July 1, 1994, may be considered a current resident of that school for purposes of this section until the pupil is promoted or graduates from that school.

(C) It may provide that no pupil who was on a waiting list for a school or specialized program, on or before July 1, 1994, pursuant to a then-existing district policy on transfers within the district, shall be displaced by pupils transferring after July 1, 1994, from outside the attendance area, as long as the continued maintenance on a waiting list remains consistent with the former policy.

(D) It may provide that schools receiving requests for admission shall give priority for attendance to siblings of pupils already in attendance in that school and to pupils whose parent or legal guardian is assigned to that school as his or her primary place of employment.

(E) It may include a process by which the school district informs parents or guardians that certain schools or grade levels within a school are currently, or are likely to be, at capacity and, therefore, those schools or grade levels are unable to accommodate any new pupils under the open enrollment policy.

(4) It is the intent of the Legislature that, upon the request of the pupil's parent or guardian and demonstration of financial need, each school district provide transportation assistance to the pupil to the extent that the district otherwise provides transportation assistance to pupils.

SEC. 77. Section 795 of the Evidence Code is amended to read:

795. (a) The testimony of a witness is not inadmissible in a criminal proceeding by reason of the fact that the witness has previously undergone hypnosis for the purpose of recalling events which are the subject of the witness' testimony, if all of the following conditions are met:

(1) The testimony is limited to those matters which the witness recalled and related prior to the hypnosis.

(2) The substance of the prehypnotic memory was preserved in written, audiotape, or videotape form prior to the hypnosis.

(3) The hypnosis was conducted in accordance with all of the following procedures:

(A) A written record was made prior to hypnosis documenting the subject's description of the event, and information which was provided to the hypnotist concerning the subject matter of the hypnosis.

(B) The subject gave informed consent to the hypnosis.

(C) The hypnosis session, including the pre- and post-hypnosis interviews, was videotape recorded for subsequent review.

(D) The hypnosis was performed by a licensed medical doctor, psychologist, licensed clinical social worker, or a licensed marriage and family therapist experienced in the use of hypnosis and independent of

and not in the presence of law enforcement, the prosecution, or the defense.

(4) Prior to admission of the testimony, the court holds a hearing pursuant to Section 402 of the Evidence Code at which the proponent of the evidence proves by clear and convincing evidence that the hypnosis did not so affect the witness as to render the witness' prehypnosis recollection unreliable or to substantially impair the ability to cross-examine the witness concerning the witness' prehypnosis recollection. At the hearing, each side shall have the right to present expert testimony and to cross-examine witnesses.

(b) Nothing in this section shall be construed to limit the ability of a party to attack the credibility of a witness who has undergone hypnosis, or to limit other legal grounds to admit or exclude the testimony of that witness.

SEC. 78. Section 1014 of the Evidence Code is amended to read:

1014. Subject to Section 912 and except as otherwise provided in this article, the patient, whether or not a party, has a privilege to refuse to disclose, and to prevent another from disclosing, a confidential communication between patient and psychotherapist if the privilege is claimed by:

(a) The holder of the privilege.

(b) A person who is authorized to claim the privilege by the holder of the privilege.

(c) The person who was the psychotherapist at the time of the confidential communication, but the person may not claim the privilege if there is no holder of the privilege in existence or if he or she is otherwise instructed by a person authorized to permit disclosure.

The relationship of a psychotherapist and patient shall exist between a psychological corporation as defined in Article 9 (commencing with Section 2995) of Chapter 6.6 of Division 2 of the Business and Professions Code, a marriage and family therapy corporation as defined in Article 6 (commencing with Section 4987.5) of Chapter 13 of Division 2 of the Business and Professions Code, or a licensed clinical social workers corporation as defined in Article 5 (commencing with Section 4998) of Chapter 14 of Division 2 of the Business and Professions Code, and the patient to whom it renders professional services, as well as between those patients and psychotherapists employed by those corporations to render services to those patients. The word ''persons'' as used in this subdivision includes partnerships, corporations, limited liability companies, associations and other groups and entities.

SEC. 79. Section 6929 of the Family Code is amended to read:

6929. (a) As used in this section:

(1) ''Counseling'' means the provision of counseling services by a provider under a contract with the state or a county to provide alcohol or drug abuse counseling services pursuant to Part 2 (commencing with Section 5600) of Division 5 of the Welfare and Institutions Code or pursuant to Division 10.5 (commencing with Section 11750) of the Health and Safety Code.

(2) ''Drug or alcohol'' includes, but is not limited to, any substance listed in any of the following:

(A) Section 380 or 381 of the Penal Code.

(B) Division 10 (commencing with Section 11000) of the Health and Safety Code.

(C) Subdivision (f) of Section 647 of the Penal Code.

(3) ''LAAM'' means levoalphacetylmethadol as specified in paragraph (10) of subdivision (c) of Section 11055 of the Health and Safety Code.

(4) ''Professional person'' means a physician and surgeon, registered nurse, psychologist, clinical social worker, or marriage and family therapist.

(b) A minor who is 12 years of age or older may consent to medical care and counseling relating to the diagnosis and treatment of a drug- or alcohol-related problem.

(c) The treatment plan of a minor authorized by this section shall include the involvement of the minor's parent or guardian, if appropriate, as determined by the professional person or treatment facility treating the minor. The professional person providing medical care or counseling to a minor shall state in the minor's treatment record whether and when the professional person attempted to contact the minor's parent or guardian, and whether the attempt to contact the parent or guardian was successful or unsuccessful, or the reason why, in the opinion of the professional person, it would not be appropriate to contact the minor's parent or guardian.

(d) The minor's parent or guardian is not liable for payment for any care provided to a minor pursuant to this section, except that if the minor's parent or guardian participates in a counseling program pursuant to this section, the parent or guardian is liable for the cost of the services provided to the minor and the parent or guardian.

(e) This section does not authorize a minor to receive replacement narcotic abuse treatment, in a program licensed pursuant to Article 3 (commencing with Section 11875) of Chapter 1 of Part 3 of Division 10.5 of the Health and Safety Code, without the consent of the minor's parent or guardian.

(f) It is the intent of the Legislature that the state shall respect the right of a parent or legal guardian to seek medical care and counseling for a drug- or alcohol-related problem of a minor child when the child does

not consent to the medical care and counseling, and nothing in this section shall be construed to restrict or eliminate this right.

(g) Notwithstanding any other provision of law, in cases where a parent or legal guardian has sought the medical care and counseling for a drug- or alcohol-related problem of a minor child, the physician shall disclose medical information concerning the care to the minor's parent or legal guardian upon his or her request, even if the minor child does not consent to disclosure, without liability for the disclosure.

SEC. 80. Section 7827 of the Family Code is amended to read:

7827. (a) ''Mentally disabled'' as used in this section means that a parent or parents suffer a mental incapacity or disorder that renders the parent or parents unable to care for and control the child adequately.

(b) A proceeding under this part may be brought where the child is one whose parent or parents are mentally disabled and are likely to remain so in the foreseeable future.

(c) Except as provided in subdivision (d), the evidence of any two experts, each of whom shall be a physician and surgeon, certified either by the American Board of Psychiatry and Neurology or under Section 6750 of the Welfare and Institutions Code, a licensed psychologist who has a doctoral degree in psychology and at least five years of postgraduate experience in the diagnosis and treatment of emotional and mental disorders, is required to support a finding under this section. In addition to this requirement, the court shall have the discretion to call a licensed marriage and family therapist, or a licensed clinical social worker, either of whom shall have at least five years of relevant postlicensure experience, in circumstances where the court determines that this testimony is in the best interest of the child and is warranted by the circumstances of the particular family or parenting issues involved. However, the court may not call a licensed marriage and family therapist or licensed clinical social worker pursuant to this section who is the adoption service provider, as defined in Section 8502, of the child who is the subject of the petition to terminate parental rights.

(d) If the parent or parents reside in another state or in a foreign country, the evidence required by this section may be supplied by the affidavits of two experts, each of whom shall be either of the following:

(1) A physician and surgeon who is a resident of that state or foreign country, and who has been certified by a medical organization or society of that state or foreign country to practice psychiatric or neurological medicine.

(2) A licensed psychologist who has a doctoral degree in psychology and at least five years of postgraduate experience in the diagnosis and treatment of emotional and mental disorders and who is licensed in that state or authorized to practice in that country.

(e) If the rights of a parent are sought to be terminated pursuant to this section, and the parent has no attorney, the court shall appoint an attorney for the parent pursuant to Article 4 (commencing with Section 7860) of Chapter 3, whether or not a request for the appointment is made by the parent.

SEC. 81. Section 8502 of the Family Code is amended to read:

8502. (a) ''Adoption service provider'' means any of the following:

(1) A licensed private adoption agency.

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

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

(4) An individual who has presented satisfactory evidence to the department that he or she is a licensed marriage and family therapist who has a minimum of five years of experience providing professional adoption casework services while employed by a licensed California adoption agency or the department. The department shall review the qualifications of each individual to determine if he or she has performed professional adoption casework services for five years as required by this section while employed by a licensed California adoption agency or the department.

(b) If, in the case of a birth parent located in California, at least three adoption service providers are not reasonably available, or, in the case of a birth parent located outside of California who has contacted at least three potential adoption service providers and been unsuccessful in obtaining the services of an adoption service provider who is reasonably available and willing to provide services, independent legal counsel for the birth parent may serve as an adoption service provider pursuant to subdivision (e) of Section 8801.5. ''Reasonably available'' means that an adoption service provider is all of the following:

(1) Available within five days for an advisement of rights pursuant to Section 8801.5, or within 24 hours for the signing of the placement agreement pursuant to paragraph (3) of subdivision (b) of Section 8801.3.

(2) Within 100 miles of the birth mother.

(3) Available for a cost not exceeding five hundred dollars ($500) to make an advisement of rights and to witness the signing of the placement agreement.

(c) Where an attorney acts as an adoption service provider, the fee to make an advisement of rights and to witness the signing of the placement agreement shall not exceed five hundred dollars ($500).

SEC. 82. Section 66452.6 of the Government Code is amended to read:

66452.6. (a) (1) An approved or conditionally approved tentative map shall expire 24 months after its approval or conditional approval, or after any additional period of time as may be prescribed by local ordinance, not to exceed an additional 12 months. However, if the subdivider is required to expend one hundred twenty-five thousand dollars ($125,000) or more to construct, improve, or finance the construction or improvement of public improvements outside the property boundaries of the tentative map, excluding improvements of public rights-of-way which abut the boundary of the property to be subdivided and which are reasonably related to the development of that property, each filing of a final map authorized by Section 66456.1 shall extend the expiration of the approved or conditionally approved tentative map by 36 months from the date of its expiration, as provided in this section, or the date of the previously filed final map, whichever is later. The extensions shall not extend the tentative map more than 10 years from its approval or conditional approval. However, a tentative map on property subject to a development agreement authorized by Article 2.5 (commencing with Section 65864) of Chapter 4 of Division 1 may be extended for the period of time provided for in the agreement, but not beyond the duration of the agreement. The number of phased final maps that may be filed shall be determined by the advisory agency at the time of the approval or conditional approval of the tentative map.

(2) The amount of one hundred twenty-five thousand dollars ($125,000) shall be annually increased by operation of law according to the adjustment for inflation set forth in the statewide cost index for class B construction, as determined by the State Allocation Board at its January meeting. The effective date of each annual adjustment shall be March 1. The adjusted amount shall apply to tentative and vesting tentative maps whose applications were received after the effective date of the adjustment.

(3) ''Public improvements,'' as used in this subdivision, include traffic controls, streets, roads, highways, freeways, bridges, overcrossings, street interchanges, flood control or storm drain facilities, sewer facilities, water facilities, and lighting facilities.

(b) (1) The period of time specified in subdivision (a), including any extension thereof granted pursuant to subdivision (e), shall not include any period of time during which a development moratorium, imposed after approval of the tentative map, is in existence. However, the length of the moratorium shall not exceed five years.

(2) The length of time specified in paragraph (1) shall be extended for up to three years, but in no event beyond January 1, 1992, during the pendency of any lawsuit in which the subdivider asserts, and the local agency which approved or conditionally approved the tentative map denies, the existence or application of a development moratorium to the tentative map.

(3) Once a development moratorium is terminated, the map shall be valid for the same period of time as was left to run on the map at the time that the moratorium was imposed. However, if the remaining time is less than 120 days, the map shall be valid for 120 days following the termination of the moratorium.

(c) The period of time specified in subdivision (a), including any extension thereof granted pursuant to subdivision (e), shall not include the period of time during which a lawsuit involving the approval or conditional approval of the tentative map is or was pending in a court of competent jurisdiction, if the stay of the time period is approved by the local agency pursuant to this section. After service of the initial petition or complaint in the lawsuit upon the local agency, the subdivider may apply to the local agency for a stay pursuant to the local agency's adopted procedures. Within 40 days after receiving the application, the local agency shall either stay the time period for up to five years or deny the requested stay. The local agency may, by ordinance, establish procedures for reviewing the requests, including, but not limited to, notice and hearing requirements, appeal procedures, and other administrative requirements.

(d) The expiration of the approved or conditionally approved tentative map shall terminate all proceedings and no final map or parcel map of all or any portion of the real property included within the tentative map shall be filed with the legislative body without first processing a new tentative map. Once a timely filing is made, subsequent actions of the local agency, including, but not limited to, processing, approving, and recording, may lawfully occur after the date of expiration of the tentative map. Delivery to the county surveyor or city engineer shall be deemed a timely filing for purposes of this section.

(e) Upon application of the subdivider filed prior to the expiration of the approved or conditionally approved tentative map, the time at which the map expires pursuant to subdivision (a) may be extended by the legislative body or by an advisory agency authorized to approve or conditionally approve tentative maps for a period or periods not exceeding a total of five years. The period of extension specified in this subdivision shall be in addition to the period of time provided by subdivision (a). Prior to the expiration of an approved or conditionally approved tentative map, upon an application by the subdivider to extend that map, the map shall automatically be extended for 60 days or until

the application for the extension is approved, conditionally approved, or denied, whichever occurs first. If the advisory agency denies a subdivider's application for an extension, the subdivider may appeal to the legislative body within 15 days after the advisory agency has denied the extension.

(f) For purposes of this section, a development moratorium includes a water or sewer moratorium, or a water and sewer moratorium, as well as other actions of public agencies which regulate land use, development, or the provision of services to the land, including the public agency with the authority to approve or conditionally approve the tentative map, which thereafter prevents, prohibits, or delays the approval of a final or parcel map. A development moratorium shall also be deemed to exist for purposes of this section for any period of time during which a condition imposed by the city or county could not be satisfied because of either of the following:

(1) The condition was one that, by its nature, necessitated action by the city or county, and the city or county either did not take the necessary action or by its own action or inaction was prevented or delayed in taking the necessary action prior to expiration of the tentative map.

(2) The condition necessitates acquisition of real property or any interest in real property from a public agency, other than the city or county that approved or conditionally approved the tentative map, and that other public agency fails or refuses to convey the property interest necessary to satisfy the condition. However, nothing in this subdivision shall be construed to require any public agency to convey any interest in real property owned by it. A development moratorium specified in this paragraph shall be deemed to have been imposed either on the date of approval or conditional approval of the tentative map, if evidence was included in the public record that the public agency which owns or controls the real property or any interest therein may refuse to convey that property or interest, or on the date that the public agency which owns or controls the real property or any interest therein receives an offer by the subdivider to purchase that property or interest for fair market value, whichever is later. A development moratorium specified in this paragraph shall extend the tentative map up to the maximum period as set forth in subdivision (b), but not later than January 1, 1992, so long as the public agency which owns or controls the real property or any interest therein fails or refuses to convey the necessary property interest, regardless of the reason for the failure or refusal, except that the development moratorium shall be deemed to terminate 60 days after the public agency has officially made, and communicated to the subdivider, a written offer or commitment binding on the agency to convey the necessary property interest for a fair market value, paid in a reasonable time and manner.

SEC. 83. Section 1348.8 of the Health and Safety Code is amended to read:

1348.8. (a) Every health care service plan that provides, operates, or contracts for, telephone medical advice services to its enrollees and subscribers shall do all of the following:

(1) Ensure that the in-state or out-of-state telephone medical advice service is registered pursuant to Chapter 15 (commencing with Section 4999) of Division 2 of the Business and Professions Code.

(2) Ensure that the staff providing telephone medical advice services for the in-state or out-of-state telephone medical advice service are licensed as follows:

(A) For full service health care service plans, the staff hold a valid California license as a registered nurse or a valid license in the state within which they provide telephone medical advice services as a physician and surgeon or physician assistant and are operating consistent with the laws governing their respective scopes of practice.

(B) (i) For specialized health care service plans providing, operating, or contracting with a telephone medical advice service in California, the staff shall be appropriately licensed, registered, or certified as a physician and surgeon pursuant to Chapter 5 (commencing with Section 2000) of Division 2 of the Business and Professions Code, as a registered nurse pursuant to Chapter 6 (commencing with Section 2700) of Division 2 of the Business and Professions Code, as a dentist pursuant to Chapter 4 (commencing with Section 1600) of Division 2 of the Business and Professions Code, as a dental hygienist pursuant to Section 1758 et seq. of the Business and Professions Code, as a psychologist pursuant to Chapter 6.6 (commencing with Section 2900) of Division 2 of the Business and Professions Code, as a marriage and family therapist pursuant to Chapter 13 (commencing with Section 4980) of Division 2 of the Business and Professions Code, as an optometrist pursuant to Chapter 7 (commencing with Section 3000) of Division 2 of the Business and Professions Code, as a chiropractor pursuant to the Chiropractic Initiative Act, or as an osteopath pursuant to the Osteopathic Initiative Act and operating consistent with the laws governing their respective scopes of practice.

(ii) For specialized health care service plans providing, operating, or contracting with an out-of-state telephone medical advice service, the staff shall be health care professionals, as identified in clause (i) 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. 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) of Division 2 of the Business and Professions Code.

(3) Ensure that every full service health care service plan provides for a physician and surgeon who is available on an on-call basis at all times the service is advertised to be available to enrollees and subscribers.

(4) Ensure that the in-state or out-of-state telephone medical advice service designates an agent for service of process in California and files this designation with the director.

(5) Requires that the in-state or out-of-state telephone medical advice service makes and maintains records for a period of five years after the telephone medical advice services are provided, including, but not limited to, oral or written transcripts of all medical advice conversations with the health care service plan's enrollees or subscribers in California and copies of all complaints. If the records of telephone medical advice services are kept out of state, the health care service plan shall, upon the request of the director, provide the records to the director within 10 days of the request.

(6) Ensures that the telephone medical advice services are provided consistent with good professional practice.

(b) The director shall forward to the Department of Consumer Affairs, within 30 days of the end of each calendar quarter, data regarding complaints filed with the department concerning telephone medical advice services.

SEC. 84. Section 1373 of the Health and Safety Code is amended to read:

1373. (a) A plan contract may not provide an exception for other coverage if the other coverage is entitlement to Medi-Cal benefits under Chapter 7 (commencing with Section 14000) or Chapter 8 (commencing with Section 14200) of Part 3 of Division 9 of the Welfare and Institutions Code, or medicaid benefits under Subchapter 19 (commencing with Section 1396) of Chapter 7 of Title 42 of the United States Code.

Each plan contract shall be interpreted not to provide an exception for the Medi-Cal or medicaid benefits.

A plan contract shall not provide an exemption for enrollment because of an applicant's entitlement to Medi-Cal benefits under Chapter 7 (commencing with Section 14000) or Chapter 8 (commencing with Section 14200) of Part 3 of Division 9 of the Welfare and Institutions Code, or medicaid benefits under Subchapter 19 (commencing with Section 1396) of Chapter 7 of Title 42 of the United States Code.

A plan contract may not provide that the benefits payable thereunder are subject to reduction if the individual insured has entitlement to the Medi-Cal or medicaid benefits.

(b) A plan contract that provides coverage, whether by specific benefit or by the effect of general wording, for sterilization operations or procedures shall not impose any disclaimer, restriction on, or limitation of, coverage relative to the covered individual's reason for sterilization.

As used in this section, ''sterilization operations or procedures'' shall have the same meaning as that specified in Section 10120 of the Insurance Code.

(c) Every plan contract that provides coverage to the spouse or dependents of the subscriber or spouse shall grant immediate accident and sickness coverage, from and after the moment of birth, to each newborn infant of any subscriber or spouse covered and to each minor child placed for adoption from and after the date on which the adoptive child's birth parent or other appropriate legal authority signs a written document, including, but not limited to, a health facility minor release report, a medical authorization form, or a relinquishment form, granting the subscriber or spouse the right to control health care for the adoptive child or, absent this written document, on the date there exists evidence of the subscriber's or spouse's right to control the health care of the child placed for adoption. No plan may be entered into or amended if it contains any disclaimer, waiver, or other limitation of coverage relative to the coverage or insurability of newborn infants of, or children placed for adoption with, a subscriber or spouse covered as required by this subdivision.

(d) Every plan contract that provides that coverage of a dependent child of a subscriber shall terminate upon attainment of the limiting age for dependent children specified in the plan, shall also provide in substance that attainment of the limiting age shall not operate to terminate the coverage of the child while the child is and continues to be both (1) incapable of self-sustaining employment by reason of mental retardation or physical handicap and (2) chiefly dependent upon the subscriber for support and maintenance, provided proof of the incapacity and dependency is furnished to the plan by the member within 31 days of the request for the information by the plan or group plan contractholder and subsequently as may be required by the plan or group plan contractholder, but not more frequently than annually after the two-year period following the child's attainment of the limiting age.

(e) A plan contract that provides coverage, whether by specific benefit or by the effect of general wording, for both an employee and one or more covered persons dependent upon the employee and provides for an extension of the coverage for any period following a termination of employment of the employee shall also provide that this extension of coverage shall apply to dependents upon the same terms and conditions precedent as applied to the covered employee, for the same period of

time, subject to payment of premiums, if any, as required by the terms of the policy and subject to any applicable collective bargaining agreement.

(f) A group contract shall not discriminate against handicapped persons or against groups containing handicapped persons. Nothing in this subdivision shall preclude reasonable provisions in a plan contract against liability for services or reimbursement of the handicap condition or conditions relating thereto, as may be allowed by rules of the director.

(g) Every group contract shall set forth the terms and conditions under which subscribers and enrollees may remain in the plan in the event the group ceases to exist, the group contract is terminated or an individual subscriber leaves the group, or the enrollees' eligibility status changes.

(h) (1) A health care service plan or specialized health care service plan may provide for coverage of, or for payment for, professional mental health services, or vision care services, or for the exclusion of these services. If the terms and conditions include coverage for services provided in a general acute care hospital or an acute psychiatric hospital as defined in Section 1250 and do not restrict or modify the choice of providers, the coverage shall extend to care provided by a psychiatric health facility as defined in Section 1250.2 operating pursuant to licensure by the State Department of Mental Health. A health care service plan that offers outpatient mental health services but does not cover these services in all of its group contracts shall communicate to prospective group contractholders as to the availability of outpatient coverage for the treatment of mental or nervous disorders.

(2) No plan shall prohibit the member from selecting any psychologist who is licensed pursuant to the Psychology Licensing Law (Chapter 6.6 (commencing with Section 2900) of Division 2 of the Business and Professions Code), any optometrist who is the holder of a certificate issued pursuant to Chapter 7 (commencing with Section 3000) of Division 2 of the Business and Professions Code or, upon referral by a physician and surgeon licensed pursuant to the Medical Practice Act (Chapter 5 (commencing with Section 2000) of Division 2 of the Business and Professions Code), (i) any marriage and family therapist who is the holder of a license under Section 4980.50 of the Business and Professions Code, (ii) any licensed clinical social worker who is the holder of a license under Section 4996 of the Business and Professions Code, (iii) any registered nurse licensed pursuant to Chapter 6 (commencing with Section 2700) of Division 2 of the Business and Professions Code, who possesses a master's degree in psychiatric-mental health nursing and is listed as a psychiatric-mental health nurse by the Board of Registered Nursing, or (iv) any advanced practice registered nurse certified as a clinical nurse specialist pursuant to Article 9 (commencing with Section 2838) of Chapter 6 of Division

2 of the Business and Professions Code who participates in expert clinical practice in the specialty of psychiatric-mental health nursing, to perform the particular services covered under the terms of the plan, and the certificate holder is expressly authorized by law to perform these services.

(3) Nothing in this section shall be construed to allow any certificate holder or licensee enumerated in this section to perform professional mental health services beyond his or her field or fields of competence as established by his or her education, training and experience.

(4) For the purposes of this section, ''marriage and family therapist'' means a licensed marriage and family therapist who has received specific instruction in assessment, diagnosis, prognosis, and counseling, and psychotherapeutic treatment of premarital, marriage, family, and child relationship dysfunctions which is equivalent to the instruction required for licensure on January 1, 1981.

(5) Nothing in this section shall be construed to allow a member to select and obtain mental health or psychological or vision care services from a certificate or license holder who is not directly affiliated with or under contract to the health care service plan or specialized health care service plan to which the member belongs. All health care service plans and individual practice associations that offer mental health benefits shall make reasonable efforts to make available to their members the services of licensed psychologists. However, a failure of a plan or association to comply with the requirements of the preceding sentence shall not constitute a misdemeanor.

(6) As used in this subdivision, ''individual practice association'' means an entity as defined in subsection (5) of Section 1307 of the federal Public Health Service Act (42 U.S.C. Sec. 300e-1, subsec. (5)).

(7) Health care service plan coverage for professional mental health services may include community residential treatment services that are alternatives to inpatient care and that are directly affiliated with the plan or to which enrollees are referred by providers affiliated with the plan.

(i) If the plan utilizes arbitration to settle disputes, the plan contracts shall set forth the type of disputes subject to arbitration, the process to be utilized, and how it is to be initiated.

(j) A plan contract that provides benefits that accrue after a certain time of confinement in a health care facility shall specify what constitutes a day of confinement or the number of consecutive hours of confinement that are requisite to the commencement of benefits.

SEC. 85. Section 1373.8 of the Health and Safety Code is amended to read:

1373.8. A health care service plan contract where the plan is licensed to do business in this state and the plan provides coverage that includes California residents but that may be written or issued for

delivery outside of California and where benefits are provided within the scope of practice of a licensed clinical social worker, a registered nurse licensed pursuant to Chapter 6 (commencing with Section 2700) of Division 2 of the Business and Professions Code, who possesses a master's degree in psychiatric-mental health nursing and is listed as a psychiatric-mental health nurse by the Board of Registered Nursing, an advanced practice registered nurse who is certified as a clinical nurse specialist pursuant to Article 9 (commencing with Section 2838) of Chapter 6 of Division 2 of the Business and Professions Code who participates in expert clinical practice in the specialty of psychiatric-mental health nursing, or a marriage and family therapist who is the holder of a license under Section 4980.50 of the Business and Professions Code, shall not be deemed to prohibit persons covered under the contract from selecting those licensed persons in California to perform the services in California that are within the terms of the contract even though the licensees are not licensed in the state where the contract is written or issued for delivery.

It is the intent of the Legislature in amending this section in the 1984 portion of the 1983–84 Legislative Session that persons covered by the contract and those providers of health care specified in this section who are licensed in California should be entitled to the benefits provided by the plan for services of those providers rendered to those persons.

SEC. 86. Section 11057 of the Health and Safety Code is amended to read:

11057. (a) The controlled substances listed in this section are included in Schedule IV.

(b) Schedule IV shall consist of the drugs and other substances, by whatever official name, common or usual name, chemical name, or brand name designated, listed in this section.

(c) 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 milligram of difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit.

(2) Dextropropoxyphene (alpha-(+)-4-dimethylamino-1, 2-diphenyl-3-methyl-2-propionoxybutane).

(3) Butorphanol.

(d) Depressants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances, 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) Alprazolam.
(2) Barbital.
(3) Chloral betaine.
(4) Chloral hydrate.
(5) Chlordiazepoxide.
(6) Clobazam.
(7) Clonazepam.
(8) Clorazepate.
(9) Diazepam.
(10) Estazolam.
(11) Ethchlorvynol.
(12) Ethinamate.
(13) Flunitrazepam.
(14) Flurazepam.
(15) Halazepam.
(16) Lorazepam.
(17) Mebutamate.
(18) Meprobamate.
(19) Methohexital.
(20) Methylphenobarbital (Mephobarbital).
(21) Midazolam.
(22) Nitrazepam.
(23) Oxazepam.
(24) Paraldehyde.
(25) Petrichoral.
(26) Phenobarbital.
(27) Prazepam.
(28) Quazepam.
(29) Temazepam.
(30) Triazolam.
(31) Zaleplon.
(32) Zolpidem.

(e) Fenfluramine. Any material, compound, mixture, or preparation which contains any quantity of the following substances, 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:

(1) Fenfluramine.

(f) 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 is possible within the specific chemical designation:

(1) Diethylpropion.

(2) Mazindol.

(3) Modafinil.

(4) Phentermine.

(5) Pemoline (including organometallic complexes and chelates thereof).

(6) Pipradrol.

(7) SPA ((-)-1-dimethylamino-1,2-diphenylethane).

(g) Other substances. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of pentazocine, including its salts.

SEC. 87. Article 2 (commencing with Section 11122) of Chapter 3 of Division 10 of the Health and Safety Code is repealed.

SEC. 88. 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 his or her duties:

(A) Knowledge and understanding of state and federal laws relating to 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 a 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. 89. Section 123105 of the Health and Safety Code is amended to read:

123105. As used in this chapter:

(a) ''Health care provider'' means any of the following:

(1) A health facility licensed pursuant to Chapter 2 (commencing with Section 1250) of Division 2.

(2) A clinic licensed pursuant to Chapter 1 (commencing with Section 1200) of Division 2.

(3) A home health agency licensed pursuant to Chapter 8 (commencing with Section 1725) of Division 2.

(4) A physician and surgeon licensed pursuant to Chapter 5 (commencing with Section 2000) of Division 2 of the Business and Professions Code or pursuant to the Osteopathic Act.

(5) A podiatrist licensed pursuant to Article 22 (commencing with Section 2460) of Chapter 5 of Division 2 of the Business and Professions Code.

(6) A dentist licensed pursuant to Chapter 4 (commencing with Section 1600) of Division 2 of the Business and Professions Code.

(7) A psychologist licensed pursuant to Chapter 6.6 (commencing with Section 2900) of Division 2 of the Business and Professions Code.

(8) An optometrist licensed pursuant to Chapter 7 (commencing with Section 3000) of Division 2 of the Business and Professions Code.

(9) A chiropractor licensed pursuant to the Chiropractic Initiative Act.

(10) A marriage and family therapist licensed pursuant to Chapter 13 (commencing with Section 4980) of Division 2 of the Business and Professions Code.

(11) A clinical social worker licensed pursuant to Chapter 14 (commencing with Section 4990) of Division 2 of the Business and Professions Code.

(12) A physical therapist licensed pursuant to Chapter 5.7 (commencing with Section 2600) of Division 2 of the Business and Professions Code.

(b) ''Mental health records'' means patient records, or discrete portions thereof, specifically relating to evaluation or treatment of a mental disorder. ''Mental health records'' includes, but is not limited to, all alcohol and drug abuse records.

(c) ''Patient'' means a patient or former patient of a health care provider.

(d) ''Patient records'' means records in any form or medium maintained by, or in the custody or control of, a health care provider relating to the health history, diagnosis, or condition of a patient, or relating to treatment provided or proposed to be provided to the patient. ''Patient records'' includes only records pertaining to the patient requesting the records or whose representative requests the records. ''Patient records'' does not include information given in confidence to a health care provider by a person other than another health care provider or the patient, and that material may be removed from any records prior

to inspection or copying under Section 123110 or 123115. ''Patient records'' does not include information contained in aggregate form, such as indices, registers, or logs.

(e) ''Patient's representative'' or ''representative'' means a parent or the guardian of a minor who is a patient, or the guardian or conservator of the person of an adult patient, or the beneficiary or personal representative of a deceased patient.

(f) ''Alcohol and drug abuse records'' means patient records, or discrete portions thereof, specifically relating to evaluation and treatment of alcoholism or drug abuse.

SEC. 90. Section 10176 of the Insurance Code is amended to read:

10176. In disability insurance, the policy may provide for payment of medical, surgical, chiropractic, physical therapy, speech pathology, audiology, acupuncture, professional mental health, dental, hospital, or optometric expenses upon a reimbursement basis, or for the exclusion of any of those services, and provision may be made therein for payment of all or a portion of the amount of charge for these services without requiring that the insured first pay the expenses. The policy shall not prohibit the insured from selecting any psychologist or other person who is the holder of a certificate or license under Section 1000, 1634, 2050, 2472, 2553, 2630, 2948, 3055, or 4938 of the Business and Professions Code, to perform the particular services covered under the terms of the policy, the certificate holder or licensee being expressly authorized by law to perform those services.

If the insured selects any person who is a holder of a certificate under Section 4938 of the Business and Professions Code, a disability insurer or nonprofit hospital service plan shall pay the bona fide claim of an acupuncturist holding a certificate pursuant to Section 4938 of the Business and Professions Code for the treatment of an insured person only if the insured's policy or contract expressly includes acupuncture as a benefit and includes coverage for the injury or illness treated. Unless the policy or contract expressly includes acupuncture as a benefit, no person who is the holder of any license or certificate set forth in this section shall be paid or reimbursed under the policy for acupuncture.

Nor shall the policy prohibit the insured, upon referral by a physician and surgeon licensed under Section 2050 of the Business and Professions Code, from selecting any licensed clinical social worker who is the holder of a license issued under Section 4996 of the Business and Professions Code or any occupational therapist as specified in Section 2570.2 of the Business and Professions Code, or any marriage and family therapist who is the holder of a license under Section 4980.50 of the Business and Professions Code, to perform the particular services covered under the terms of the policy, or from selecting any speech-language pathologist or audiologist licensed under Section 2532

of the Business and Professions Code or any registered nurse licensed pursuant to Chapter 6 (commencing with Section 2700) of Division 2 of the Business and Professions Code, who possesses a master's degree in psychiatric-mental health nursing and is listed as a psychiatric-mental health nurse by the Board of Registered Nursing or any advanced practice registered nurse certified as a clinical nurse specialist pursuant to Article 9 (commencing with Section 2838) of Chapter 6 of Division 2 of the Business and Professions Code who participates in expert clinical practice in the specialty of psychiatric-mental health nursing, or any respiratory care practitioner certified pursuant to Chapter 8.3 (commencing with Section 3700) of Division 2 of the Business and Professions Code to perform services deemed necessary by the referring physician, that certificate holder, licensee or otherwise regulated person, being expressly authorized by law to perform the services.

Nothing in this section shall be construed to allow any certificate holder or licensee enumerated in this section to perform professional mental health services beyond his or her field or fields of competence as established by his or her education, training, and experience. For the purposes of this section, ''marriage and family therapist'' means a licensed marriage and family therapist who has received specific instruction in assessment, diagnosis, prognosis, and counseling, and psychotherapeutic treatment of premarital, marriage, family, and child relationship dysfunctions that is equivalent to the instruction required for licensure on January 1, 1981.

An individual disability insurance policy, which is issued, renewed, or amended on or after January 1, 1988, which includes mental health services coverage may not include a lifetime waiver for that coverage with respect to any applicant. The lifetime waiver of coverage provision shall be deemed unenforceable.

SEC. 91. Section 10176.7 of the Insurance Code is amended to read:

10176.7. Disability insurance where the insurer is licensed to do business in this state and which provides coverage under a contract of insurance which includes California residents but which may be written or issued for delivery outside of California where benefits are provided within the scope of practice of a licensed clinical social worker, a registered nurse licensed pursuant to Chapter 6 (commencing with Section 2700) of Division 2 of the Business and Professions Code who possesses a master's degree in psychiatric-mental health nursing and two years of supervised experience in psychiatric-mental health nursing, a marriage and family therapist who is the holder of a license under Section 17805 of the Business and Professions Code, or a respiratory care practitioner certified pursuant to Chapter 8.3 (commencing with Section 3700) of Division 2 of the Business and Professions Code shall not be deemed to prohibit persons covered under the contract from

selecting those licensees in California to perform the services in California which are within the terms of the contract even though the licensees are not licensed in the state where the contract is written or issued for delivery.

It is the intent of the Legislature in amending this section in the 1984 portion of the 1983–84 Legislative Session that persons covered by the insurance and those providers of health care specified in this section who are licensed in California should be entitled to the benefits provided by the insurance for services of those providers rendered to those persons.

SEC. 92. Section 10177 of the Insurance Code is amended to read:

10177. A self-insured employee welfare benefit plan may provide for payment of professional mental health expenses upon a reimbursement basis, or for the exclusion of those services, and provision may be made therein for payment of all or a portion of the amount of charge for those services without requiring that the employee first pay those expenses. The plan shall not prohibit the employee from selecting any psychologist who is the holder of a certificate issued under Section 2948 of the Business and Professions Code or, upon referral by a physician and surgeon licensed under Section 2135 of the Business and Professions Code, any licensed clinical social worker who is the holder of a license issued under Section 4996 of the Business and Professions Code or any marriage and family therapist who is the holder of a certificate or license under Section 4980.50 of the Business and Professions Code, or any registered nurse licensed pursuant to Chapter 6 (commencing with Section 2700) of Division 2 of the Business and Professions Code, who possesses a master's degree in psychiatric-mental health nursing and is listed as a psychiatric-mental health nurse by the Board of Registered Nursing or any advanced practice registered nurse certified as a clinical nurse specialist pursuant to Article 9 (commencing with Section 2838) of Chapter 6 of Division 2 of the Business and Professions Code who participates in expert clinical practice in the specialty of psychiatric-mental health nursing, to perform the particular services covered under the terms of the plan, the certificate or license holder being expressly authorized by law to perform these services.

Nothing in this section shall be construed to allow any certificate holder or licensee enumerated in this section to perform professional services beyond his or her field or fields of competence as established by his or her education, training, and experience. For the purposes of this section, ''marriage and family therapist'' shall mean a licensed marriage and family therapist who has received specific instruction in assessment, diagnosis, prognosis, and counseling, and psychotherapeutic treatment of premarital, marriage, family, and child relationship dysfunctions

which is equivalent to the instruction required for licensure on January 1, 1981.

A self-insured employee welfare benefit plan, which is issued, renewed, or amended on or after January 1, 1988, that includes mental health services coverage in nongroup contracts may not include a lifetime waiver for that coverage with respect to any employee. The lifetime waiver of coverage provision shall be deemed unenforceable.

SEC. 93. Section 10177.8 of the Insurance Code is amended to read:

10177.8. A self-insured employee welfare benefit plan doing business in this state and providing coverage that includes California residents but that may be written or issued for delivery outside of California where benefits are provided within the scope of practice of a licensed clinical social worker, a registered nurse licensed pursuant to Chapter 6 (commencing with Section 2700) of Division 2 of the Business and Professions Code who possesses a master's degree in psychiatric-mental health nursing and two years of supervised experience in psychiatric-mental health nursing, or a marriage and family therapist who is the holder of a license under Section 17805 of the Business and Professions Code, shall not be deemed to prohibit persons covered under the plan from selecting those licensees in California to perform the services in California that are within the terms of the contract even though the licensees are not licensed in the state where the contract is written or issued.

It is the intent of the Legislature in amending this section in the 1984 portion of the 1983–84 Legislative Session that persons covered by the plan and those providers of health care specified in this section who are licensed in California should be entitled to the benefits provided by the plan for services of those providers rendered to those persons.

SEC. 94. Section 3209.8 of the Labor Code is amended to read:

3209.8. Treatment reasonably required to cure or relieve from the effects of an injury shall include the services of marriage and family therapists and clinical social workers licensed by California state law and within the scope of their practice as defined by California state law if the injured person is referred to the marriage and family therapist or the clinical social worker by a licensed physician and surgeon, with the approval of the employer, for treatment of a condition arising out of the injury. Nothing in this section shall be construed to authorize marriage and family therapists or clinical social workers to determine disability for the purposes of Article 3 (commencing with Section 4650) of Chapter 2 of Part 2. The requirement of this section that the employer approve the referral by a licensed physician or surgeon shall not be construed to preclude reimbursement for self-procured treatment, found by the appeals board to be otherwise compensable pursuant to this division, where the employer has refused to authorize any treatment for

the condition arising from the injury treated by the marriage and family therapist or clinical social worker.

SEC. 96. Section 4514 of the Welfare and Institutions Code is amended to read:

4514. All information and records obtained in the course of providing intake, assessment, and services under Division 4.1 (commencing with Section 4400), Division 4.5 (commencing with Section 4500), Division 6 (commencing with Section 6000), or Division 7 (commencing with Section 7100) to persons with developmental disabilities shall be confidential. Information and records obtained in the course of providing similar services to either voluntary or involuntary recipients prior to 1969 shall also be confidential. Information and records shall be disclosed only in any of the following cases:

(a) In communications between qualified professional persons, whether employed by a regional center or state developmental center, or not, in the provision of intake, assessment, and services or appropriate referrals. The consent of the person with a developmental disability, or his or her guardian or conservator, shall be obtained before information or records may be disclosed by regional center or state developmental center personnel to a professional not employed by the regional center or state developmental center, or a program not vendored by a regional center or state developmental center.

(b) When the person with a developmental disability, who has the capacity to give informed consent, designates individuals to whom information or records may be released, except that nothing in this article shall be construed to compel a physician, psychologist, social worker, marriage and family therapist, nurse, attorney, or other professional to reveal information that has been given to him or her in confidence by a family member of the person unless a valid release has been executed by that family member.

(c) To the extent necessary for a claim, or for a claim or application to be made on behalf of a person with a developmental disability for aid, insurance, government benefit, or medical assistance to which he or she may be entitled.

(d) If the person with a developmental disability is a minor, ward, or conservatee, and his or her parent, guardian, conservator, or limited conservator with access to confidential records, designates, in writing, persons to whom records or information may be disclosed, except that nothing in this article shall be construed to compel a physician, psychologist, social worker, marriage and family therapist, nurse, attorney, or other professional to reveal information that has been given to him or her in confidence by a family member of the person unless a valid release has been executed by that family member.

(e) For research, provided that the Director of Developmental Services designates by regulation rules for the conduct of research and requires the research to be first reviewed by the appropriate institutional review board or boards. These rules shall include, but need not be limited to, the requirement that all researchers shall sign an oath of confidentiality as follows:

"

_____

Date

As a condition of doing research concerning persons with developmental disabilities who have received services from ____ (fill in the facility, agency or person), I, ____, agree to obtain the prior informed consent of persons who have received services to the maximum degree possible as determined by the appropriate institutional review board or boards for protection of human subjects reviewing my research, or the person's parent, guardian, or conservator, and I further agree not to divulge any information obtained in the course of the research to unauthorized persons, and not to publish or otherwise make public any information regarding persons who have received services so those persons who received services are identifiable.

I recognize that the unauthorized release of confidential information may make me subject to a civil action under provisions of the Welfare and Institutions Code.

_____"

Signed

(f) To the courts, as necessary to the administration of justice.

(g) To governmental law enforcement agencies as needed for the protection of federal and state elective constitutional officers and their families.

(h) To the Senate Rules Committee or the Assembly Rules Committee for the purposes of legislative investigation authorized by the committee.

(i) To the courts and designated parties as part of a regional center report or assessment in compliance with a statutory or regulatory requirement, including, but not limited to, Section 1827.5 of the Probate Code, Sections 1001.22 and 1370.1 of the Penal Code, Section 6502 of the Welfare and Institutions Code, and Section 56557 of Title 17 of the California Code of Regulations.

(j) To the attorney for the person with a developmental disability in any and all proceedings upon presentation of a release of information signed by the person, except that when the person lacks the capacity to

give informed consent, the regional center or state developmental center director or designee, upon satisfying himself or herself of the identity of the attorney, and of the fact that the attorney represents the person, shall release all information and records relating to the person except that nothing in this article shall be construed to compel a physician, psychologist, social worker, marriage and family therapist, nurse, attorney, or other professional to reveal information that has been given to him or her in confidence by a family member of the person unless a valid release has been executed by that family member.

(k) Upon written consent by a person with a developmental disability previously or presently receiving services from a regional center or state developmental center, the director of the regional center or state developmental center, or his or her designee, may release any information, except information that has been given in confidence by members of the family of the person with developmental disabilities, requested by a probation officer charged with the evaluation of the person after his or her conviction of a crime if the regional center or state developmental center director or designee determines that the information is relevant to the evaluation. The consent shall only be operative until sentence is passed on the crime of which the person was convicted. The confidential information released pursuant to this subdivision shall be transmitted to the court separately from the probation report and shall not be placed in the probation report. The confidential information shall remain confidential except for purposes of sentencing. After sentencing, the confidential information shall be sealed.

(*l*) Between persons who are trained and qualified to serve on ''multidisciplinary personnel'' teams pursuant to subdivision (d) of Section 18951. The information and records sought to be disclosed shall be relevant to the prevention, identification, management, or treatment of an abused child and his or her parents pursuant to Chapter 11 (commencing with Section 18950) of Part 6 of Division 9.

(m) When a person with a developmental disability dies from any cause, natural or otherwise, while hospitalized in a state developmental center, the State Department of Developmental Services, the physician in charge of the client, or the professional in charge of the facility or his or her designee, shall release information and records to the coroner. The State Department of Developmental Services, the physician in charge of the client, or the professional in charge of the facility or his or her designee, shall not release any notes, summaries, transcripts, tapes, or records of conversations between the resident and health professional personnel of the hospital relating to the personal life of the resident that is not related to the diagnosis and treatment of the resident's physical condition. Any information released to the coroner pursuant to this

section shall remain confidential and shall be sealed and shall not be made part of the public record.

(n) To authorized licensing personnel who are employed by, or who are authorized representatives of, the State Department of Health Services, and who are licensed or registered health professionals, and 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 health facilities and community care facilities, and to ensure that the standards of care and services provided in these facilities are adequate and appropriate and to ascertain compliance with the rules and regulations to which the facility is subject. The confidential information shall remain confidential except for purposes of inspection, licensing, or investigation pursuant to Chapter 2 (commencing with Section 1250) and Chapter 3 (commencing with Section 1500) 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 Health Services or 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 which 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 Health Services or 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 Health Services or the State Department of Social Services shall not contain the name of the person with a developmental disability.

(o) To any board which licenses and certifies professionals in the fields of mental health and developmental disabilities pursuant to state law, when the Director of Developmental Services has reasonable cause to believe that there has occurred a violation of any provision of law subject to the jurisdiction of a board and the records are relevant to the violation. The information shall be sealed after a decision is reached in the matter of the suspected violation, and shall not subsequently be released except in accordance with this subdivision. Confidential information in the possession of the board shall not contain the name of the person with a developmental disability.

(p) To governmental law enforcement agencies by the director of a regional center or state developmental center, or his or her designee, when (1) the person with a developmental disability has been reported lost or missing or (2) there is probable cause to believe that a person with a developmental disability has committed, or has been the victim of, murder, manslaughter, mayhem, aggravated mayhem, kidnapping, robbery, carjacking, assault with the intent to commit a felony, arson, extortion, rape, forcible sodomy, forcible oral copulation, assault or battery, or unlawful possession of a weapon, as provided in Section 12020 of the Penal Code.

This subdivision shall be limited solely to information directly relating to the factual circumstances of the commission of the enumerated offenses and shall not include any information relating to the mental state of the patient or the circumstances of his or her treatment unless relevant to the crime involved.

This subdivision shall not be construed as an exception to, or in any other way affecting, the provisions of Article 7 (commencing with Section 1010) of Chapter 4 of Division 8 of the Evidence Code, or Chapter 11 (commencing with Section 15600) and Chapter 13 (commencing with Section 15750) of Part 3 of Division 9.

(q) To the Youth Authority and Adult Correctional Agency or any component thereof, as necessary to the administration of justice.

(r) To an agency mandated to investigate a report of abuse filed pursuant to either Section 11164 of the Penal Code or Section 15630 of the Welfare and Institutions Code for the purposes of either a mandated or voluntary report or when those agencies request information in the course of conducting their investigation.

(s) When a person with developmental disabilities, or the parent, guardian, or conservator of a person with developmental disabilities who lacks capacity to consent, fails to grant or deny a request by a regional center or state developmental center to release information or records relating to the person with developmental disabilities within a reasonable period of time, the director of the regional or developmental center, or his or her designee, may release information or records on behalf of that person provided both of the following conditions are met:

(1) Release of the information or records is deemed necessary to protect the person's health, safety, or welfare.

(2) The person, or the person's parent, guardian, or conservator, has been advised annually in writing of the policy of the regional center or state developmental center for release of confidential client information or records when the person with developmental disabilities, or the person's parent, guardian, or conservator, fails to respond to a request for release of the information or records within a reasonable period of time.

A statement of policy contained in the client's individual program plan shall be deemed to comply with the notice requirement of this paragraph.

SEC. 97. Section 5256.1 of the Welfare and Institutions Code is amended to read:

5256.1. The certification review hearing shall be conducted by either a court-appointed commissioner or a referee, or a certification review hearing officer. The certification review hearing officer shall be either a state qualified administrative law hearing officer, a medical doctor, a licensed psychologist, a registered nurse, a lawyer, a certified law student, a licensed clinical social worker, or a licensed marriage and family therapist. Licensed psychologists, licensed clinical social workers, licensed marriage and family therapists, and registered nurses who serve as certification review hearing officers shall have had a minimum of five years' experience in mental health. Certification review hearing officers shall be selected from a list of eligible persons unanimously approved by a panel composed of the local mental health director, the county public defender, and the county counsel or district attorney designated by the county board of supervisors. No employee of the county mental health program or of any facility designated by the county and approved by the State Department of Mental Health as a facility for 72-hour treatment and evaluation may serve as a certification review hearing officer.

The location of the certification review hearing shall be compatible with, and least disruptive of, the treatment being provided to the person certified. In addition, hearings conducted by certification review officers shall be conducted at an appropriate place at the facility where the person certified is receiving treatment.

SEC. 98. Section 5751 of the Welfare and Institutions Code is amended to read:

5751. (a) Regulations pertaining to the qualifications of directors of local mental health services shall be administered in accordance with Section 5607. These standards may include the maintenance of records of service which shall be reported to the State Department of Mental Health in a manner and at times as it may specify.

(b) Regulations pertaining to the position of director of local mental health services, where the local director is other than the local health officer or medical administrator of the county hospitals, shall require that the director be a psychiatrist, psychologist, clinical social worker, marriage and family therapist, registered nurse, or hospital administrator, who meets standards of education and experience established by the Director of Mental Health. Where the director is not a psychiatrist, the program shall have a psychiatrist licensed to practice medicine in this state and who shall provide to patients medical care and

services as authorized by Section 2051 of the Business and Professions Code.

(c) The regulations shall be adopted in accordance with the Administrative Procedure Act, Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

SEC. 99. Section 5751.2 of the Welfare and Institutions Code is amended to read:

5751.2. (a) Except as provided in this section, persons employed or under contract to provide mental health services pursuant to this part shall be subject to all applicable requirements of law regarding professional licensure, and no person shall be employed in local mental health programs pursuant to this part to provide services for which a license is required, unless the person possesses a valid license.

(b) Persons employed as psychologists and clinical social workers, while continuing in their employment in the same class as of January 1, 1979, in the same program or facility, including those persons on authorized leave, but not including intermittent personnel, shall be exempt from the requirements of subdivision (a).

(c) While registered with the licensing board of jurisdiction for the purpose of acquiring the experience required for licensure, persons employed or under contract to provide mental health services pursuant to this part as clinical social workers or marriage and family therapists shall be exempt from subdivision (a). Registration shall be subject to regulations adopted by the appropriate licensing board.

(d) The requirements of subdivision (a) shall be waived by the department for persons employed or under contract to provide mental health services pursuant to this part as psychologists who are gaining the experience required for licensure. A waiver granted under this subdivision may not exceed five years from the date of employment by, or contract with, a local mental health program for persons in the profession of psychology.

(e) The requirements of subdivision (a) shall be waived by the department for persons who have been recruited for employment from outside this state as psychologists, clinical social workers, or marriage and family therapists and whose experience is sufficient to gain admission to a licensing examination. A waiver granted under this subdivision may not exceed three years from the date of employment by, or contract with, a local mental health program for persons in these three professions who are recruited from outside this state.

SEC. 100. 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 1014

An act to add Chapter 6 (commencing with Section 430) to Part 1 of the Education Code, relating to public schools, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 27, 2002. Filed with Secretary of State September 27, 2002.]

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

SECTION 1. Chapter 6 (commencing with Section 430) is added to Part 1 of the Education Code, to read:

CHAPTER 6. ENGLISH LEARNER AND IMMIGRANT PUPIL FEDERAL CONFORMITY ACT

430. (a) This chapter shall be known, and may be cited, as the English Learner and Immigrant Pupil Federal Conformity Act.

(b) The purpose of this chapter is to ensure that instructional services are provided to pupils with limited English proficiency in conformity with federal requirements that are designed to ensure that all pupils have reasonable access to educational opportunities that are necessary in order for the pupils to achieve at high levels in English and in the other core curriculum areas of instruction.

(c) This act is intended to be declaratory of Title III of the federal No Child Left Behind Act of 2001 and is intended to assist local education agencies in understanding the requirements and funding formulas to provide allowable services. It is the intent of the Legislature that, to the extent federal law is amended, this chapter will be amended to conform to those changes.

(d) The requirements of this chapter apply only to local educational agencies that receive federal funds pursuant to Title III of the federal No Child Left Behind Act of 2001.

435. For purposes of this chapter, the following terms have the following meanings:

(a) ''English learner'' or ''pupil of limited English proficiency'' means a pupil who was not born in the United States or whose native language is a language other than English or who comes from an

environment where a language other than English is dominant; and whose difficulties in speaking, reading, writing, or understanding the English language may be sufficient to deny the individual the ability to meet the state's proficient level of achievement on state assessments, the ability to successfully achieve in classrooms where the language of instruction is English, or the opportunity to participate fully in society.

(b) ''Immigrant pupil'' means a pupil who was born in a country other than the United States and who has attended a kindergarten class or any of grades 1 to 12, inclusive, in a school in the United States for three or fewer years.

(c) ''Federal No Child Left Behind Act of 2001'' means Public Law Number 107-110 (20 U.S.C. Sec. 6801, et seq.).

440. (a) A local educational agency shall provide instructional services to limited-English-proficient pupils and immigrant pupils in conformity with Section 6801 and following of Title 20 of the United States Code.

(b) In accordance with Section 7012 of Title 20 of the United States Code, each parent or guardian of a pupil enrolled in a public school shall receive notice of the assessment of his or her child's English language proficiency not later than 30 days after the start of the school year. The notice shall include all of the following:

(1) The reason for the child's classification as limited English proficient.

(2) The level of English proficiency.

(3) A description of the program for the English language development instruction, including a description of all of the following:

(A) The manner in which the program will meet the educational strengths and needs of the child.

(B) The manner in which the program will help the child develop his or her English proficiency and meet age appropriate academic standards.

(C) The specific exit requirements for the program, the expected rate of transition from the program into classrooms that are not tailored for limited-English-proficient children, and the expected rate of graduation from secondary school for the program if funds available under Sections 6801 and following of Title 20 of the United States Code are used for children in secondary schools.

(D) Where the child has been identified as having exceptional needs, the manner in which the program meets the requirements of the child's individualized education plan.

(4) Information regarding a parent or guardian's option to decline to allow the child to become enrolled in the program or to choose to allow the child to become enrolled in an alternative program.

(5) Information designed to assist a parent or guardian in selecting among available programs, if more than one program is offered.

441. A local educational agency that receives federal funds for a language instruction program and that fails to make progress on the annual pupil achievement objectives in any fiscal year shall inform each parent or guardian of each pupil identified for participation in that program, or participating in that program, within 30 days of the occurrence of the failure, as required pursuant to Section 7012 (b) of Title 20 of the United States Code.

442. In accordance with Section 6824 (d) of Title 20 of the United States Code, a local educational agency that experiences a significant increase, as determined by the State Department of Education, in the number of immigrant pupils in comparison to the average of the preceding two years may be eligible for a federal subgrant if that local educational agency agrees to expend the funds to improve the education of immigrant pupils by assisting the pupils to learn English and meet challenging state academic content and pupil achievement standards.

443. (a) In accordance with Section 6826 of Title 20 of the United States Code, an eligible local educational agency desiring a subgrant pursuant to Section 6824 of Title 20 of the United States Code shall submit a plan to the State Department of Education at the time, in the manner, and containing the information, that the State Department of Education may require.

(b) The plan submitted shall do the following:

(1) Describe the programs and activities to be developed, implemented, and administered.

(2) Describe how the agency will use the subgrant funds to meet all annual measurable achievement objectives for limited-English-proficient pupils in English proficiency and in meeting challenging state academic content and pupil academic achievement standards.

(3) Describe how the agency will hold elementary schools and secondary schools accountable for all of the following:

(A) Meeting the annual measurable achievement objectives.

(B) Making adequate yearly progress for limited-English-proficient pupils.

(C) Annually measuring the English proficiency of limited-English-proficient pupils so that pupils served develop proficiency in English while meeting state academic content and pupil academic achievement standards.

(4) Describe how the agency will promote parental and community participation in programs for limited-English-proficient pupils.

(5) Contain an assurance that the agency consulted with teachers, researchers, school administrators, and parents, and, if appropriate, with education-related community groups and nonprofit organizations, and institutions of higher education, in developing the plan.

(6) Describe how language instruction education programs carried out under the subgrant will ensure that limited-English-proficient pupils being served by the programs develop English proficiency.

444. In accordance with Section 6826 (c) of Title 20 of the United States Code, a local educational agency that receives a federal subgrant pursuant to Sections 6801 and following of Title 20 of the United States Code shall include in its plan a certification that all teachers in any language instruction education program for limited-English-proficient pupils that is, or will be, funded under Part A of Title III of the federal No Child Left Behind Act of 2001 are fluent in English and any other language used for instruction, including having written and oral communication skills.

445. In accordance with Section 6846 of Title 20 of the United States Code, nothing in this chapter shall be construed to negate or supersede state law or the legal authority under state law of the State Department of Education.

446. In compliance with Section 6824 of Title 20 of the United States Code, the Superintendent of Public Instruction may not award a subgrant in an amount that is less than ten thousand dollars ($10,000). A local education agency may form a consortium with one or more other local education agencies to apply for Title III funds as a consortium, so long as the grant to the consortium is ten thousand dollars ($10,000) or more. A consortium shall include only those entities specified by Section 6871 of Title 20 of the United State Code. If a consortium applies for a subgrant, it shall be awarded to the local lead education agency on behalf of all of the members of the consortium. The members of the consortium shall collectively develop and approve a memorandum of understanding for the implementation of the programs and services they will provide with these funds.

SEC. 2. The funds appropriated for local assistance in Schedule 2 of Item 6110-125-0890 of Section 2.00 of the Budget Act of 2002, shall be allocated pursuant to Title III of the federal No Child Left Behind Act of 2001 (Pub. L. No. 107-110; 20 U.S.C. Sec. 6801 et seq.), and shall be used for the purposes of this act.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because this act implements a federal law or regulation and results only in costs mandated by the federal government, within the meaning of Section 17556 of the Government Code.

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 enable the Superintendent of Public Instruction and the State Department of Education to begin to distribute to eligible local educational agencies the federal funds that it has received through the federal No Child Left Behind Act of 2001 (Pub. L. No. 107-110) for the purpose of improving pupil English language proficiency in elementary and secondary schools, it is necessary that this act take effect immediately as an urgency statute.

CHAPTER 1015

An act to amend Sections 1502 and 2117 of, and to add Section 1502.5 to, the Corporations Code, relating to corporations.

[Approved by Governor September 28, 2002. Filed with Secretary of State September 28, 2002.]

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

SECTION 1. This act shall be known and may be cited as the California Corporate Disclosure Act.

SEC. 2. Section 1502 of the Corporations Code is amended to read:

1502. (a) (1) Every corporation shall file, within 90 days after the filing of its original articles and annually thereafter during the applicable filing period, on a form prescribed by the Secretary of State, a statement containing all of the following:

(A) The names and complete business or residence addresses of its incumbent directors.

(B) The number of vacancies on the board, if any.

(C) The names and complete business or residence addresses of its chief executive officer, secretary, and chief financial officer.

(D) The street address of its principal executive office.

(E) If the address of its principal executive office is not in this state, the street address of its principal business office in this state, if any.

(F) A statement of the general type of business that constitutes the principal business activity of the corporation (for example, manufacturer of aircraft; wholesale liquor distributor; or retail department store).

(2) In addition to all of the information required by paragraph (1), every publicly traded company shall also include the following information in the statement:

(A) The name of the independent auditor used by the corporation and a description of any other services, if any, performed for the corporation during the previous 24 months by the independent auditor, by its parent

corporation, or by a subsidiary or corporate affiliate of the independent auditor or its parent corporation.

(B) The date of the last report prepared for the corporation by the independent auditor. The corporation shall attach a copy of the report to the statement.

(C) The annual compensation paid to each member of the board of directors and each executive officer, including the number of any shares or options for shares that were not available to other employees of the corporation.

(D) A description of any loans made to a member of the board of directors by the corporation at a preferential loan rate during the previous 24 months, including the amount and terms of the loans.

(E) A statement indicating whether any bankruptcy was filed by the corporation, its executive officers, or members of the board of directors within the previous 10 years.

(F) A statement indicating whether any member of the board of directors or executive officer of the corporation was convicted of fraud during the previous 10 years.

(G) A statement indicating whether the corporation violated any federal security laws or any security or banking provision of California law during the previous 10 years for which the corporation was found liable in an action before a federal or state court or regulatory agency or a self-regulatory organization in which a judgment over ten thousand dollars ($10,000) was entered.

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

(A) ''Publicly traded company'' means a company with securities that are either listed or admitted to trading on a national or foreign exchange, or is the subject of two-way quotations, such as both bid and asked prices, that is regularly published by one or more broker-dealers in the National Daily Quotation Service or a similar service.

(B) ''Executive officer'' means the five most highly compensated officers of the company, excluding any officer who is also a member of the board of directors.

(b) The statement required by subdivision (a) shall also designate, as the agent of the corporation for the purpose of service of process, a natural person residing in this state or a corporation that has complied with Section 1505 and whose capacity to act as an agent has not terminated. If a natural person is designated, the statement shall set forth that person's complete business or residence address. If a corporate agent is designated, no address for it shall be set forth.

(c) If there has been no change in the information in the last filed statement of the corporation on file in the Secretary of State's office, the corporation may, in lieu of filing the statement required by subdivisions (a) and (b), advise the Secretary of State, on a form prescribed by the

Secretary of State, that no changes in the required information have occurred during the applicable filing period.

(d) For the purposes of this section, the applicable filing period for a corporation shall be the calendar month during which its original articles were filed and the immediately preceding five calendar months. The Secretary of State shall mail a form for compliance with this section to each corporation approximately three months prior to the close of the applicable filing period. The form shall state the due date thereof and shall be mailed to the last address of the corporation according to the records of the Secretary of State. The failure of the corporation to receive the form is not an excuse for failure to comply with this section.

(e) Whenever any of the information required by subdivision (a) is changed, the corporation may file a current statement containing all the information required by subdivisions (a) and (b). In order to change its agent for service of process or the address of the agent, the corporation must file a current statement containing all the information required by subdivisions (a) and (b). Whenever any statement is filed pursuant to this section, it supersedes any previously filed statement and the statement in the articles as to the agent for service of process and the address of the agent.

(f) The Secretary of State may destroy or otherwise dispose of any statement filed pursuant to this section after it has been superseded by the filing of a new statement.

(g) This section shall not be construed to place any person dealing with the corporation on notice of, or under any duty to inquire about, the existence or content of a statement filed pursuant to this section.

(h) The statement required by subdivision (a) shall be available and open to the public for inspection. The Secretary of State, no later than December 31, 2004, shall provide access to all information contained in this statement by means of an online database.

(i) In addition to any other fees required, a corporation shall pay a five-dollar ($5) disclosure fee when filing the statement required by subdivision (a). One-half of the fee shall be utilized to further the provisions of this section, including the development and maintenance of the online database required by subdivision (h), and one-half shall be deposited into the Victims of Corporate Fraud Compensation Fund established in Section 1502.5.

(j) A corporation shall certify that the information it provides pursuant to subdivisions (a) and (b) is true and correct. No claim may be made against the state for inaccurate information contained in the statements.

SEC. 3. Section 1502.5 is added to the Corporations Code, to read:

1502.5. The Victims of Corporate Fraud Compensation Fund is hereby established in the State Treasury. The fund shall be administered

by the Secretary of State who shall adopt regulations regarding the administration of the fund and the eligibility of victims to receive compensation from the fund. The revenue in the fund shall be used for the sole purpose of providing restitution to the victims of a corporate fraud.

SEC. 4. Section 2117 of the Corporations Code is amended to read:

2117. (a) (1) Every foreign corporation (other than a foreign association) qualified to transact intrastate business shall file, annually during the applicable filing period, on a form prescribed by the Secretary of State, a statement containing:

(A) The names and complete business or residence addresses of its chief executive officer, secretary, and chief financial officer.

(B) The street address of its principal executive office.

(C) The street address of its principal business office in this state, if any.

(D) A statement of the general type of business that constitutes the principal business activity of the corporation (for example, manufacturer of aircraft; wholesale liquor distributor; or retail department store).

(2) In addition to all of the information required by paragraph (1) every publicly traded company shall also include the following information in the statement:

(A) The name of the independent auditor used by the corporation and a description of any other services, if any, performed for the corporation during the previous 24 months by the independent auditor, by its parent corporation, or by an agent, subsidiary, corporate partner, or corporate affiliate of the independent auditor or its parent corporation.

(B) The date of the last report prepared for the corporation by the independent auditor. The corporation shall attach a copy of the report to the statement.

(C) The annual compensation paid to each member of the board of directors and each executive officer, including the number of any shares or options for shares that were not available to other employees of the corporation.

(D) A description of any loans made to a member of the board of directors by the corporation at a preferential loan rate during the previous 24 months, including the amount and terms of the loans.

(E) A statement indicating whether any bankruptcy was filed by the corporation, its executive officers, or members of the board of directors within the previous 10 years.

(F) A statement indicating whether any member of the board of directors or executive officer of the corporation was convicted of fraud during the previous 10 years.

(G) A statement indicating whether the corporation violated any federal security laws or any banking or security provision of California

law during the previous 10 years for which the corporation was found liable in an action before a federal or state court or regulatory agency or a self-regulatory agency in which a judgment over ten thousand dollars ($10,000) was entered.

If the executive officers of the corporation use other titles, the statement shall include the officers performing comparable duties under other titles. If the corporation has no executive officers, or has no executive officers who are natural persons, the statement shall include the names of natural persons performing comparable duties for the corporation pursuant to a management contract or other arrangement.

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

(4) ''Publicly traded company'' means a company with securities that are either listed or admitted to trading on a national or foreign exchange, or is the subject of two-way quotations, such as both bid and asked prices, that is regularly published by one or more broker-dealers in the National Daily Quotation Service or a similar service.

(B) ''Executive officer'' means the five most highly compensated officers of the company, excluding any officer that is also a member of the board of directors.

(b) The statement required by subdivision (a) shall also designate, as the agent of the corporation for the purpose of service of process, a natural person residing in this state or a corporation that has complied with Section 1505 and whose capacity to act as the agent has not terminated. If a natural person is designated, the statement shall set forth the person's complete business or residence address. If a corporate agent is designated, no address for it shall be set forth.

(c) The statement and designation required by subdivision (a) shall be available and open to the public for inspection. The Secretary of State, no later than December 31, 2004, shall provide access to all information contained in the statement and designation by means of an online database.

(d) In addition to any other fees required, a foreign corporation shall pay a five-dollar ($5) disclosure fee upon filing the statement and designation required by subdivision (a). One-half of the fee shall be utilized to further the provisions of this section, including the development and maintenance of the online database required by subdivision (d), and one-half shall be deposited into the Victims of Corporate Fraud Compensation Fund established in Section 1502.5.

(e) Whenever any of the information required by subdivision (a) is changed, the corporation may file a current statement containing all the information required by subdivisions (a) and (b). In order to change its agent for service of process or the address of the agent, the corporation shall file a current statement containing all the information required by subdivisions (a) and (b). Whenever any statement is filed pursuant to this

section, it supersedes any previously filed statement and the statement in the filing pursuant to Section 2105.

(f) Subdivisions (c), (d), (f), and (g) of Section 1502 apply to statements filed pursuant to this section except that ''articles'' shall mean the filing pursuant to Section 2105.

CHAPTER 1016

An act to amend Sections 13102, 13103, 65041, 65042, 65048, 65049, and 66037 of, and to add Sections 65041.1 and 65404 to, the Government Code, relating to state planning.

[Approved by Governor September 28, 2002. Filed with Secretary of State September 28, 2002.]

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

SECTION 1. Section 13102 of the Government Code is amended to read:

13102. In conjunction with the Governor's Budget submitted pursuant to Section 13337, the Governor shall submit annually a proposed five-year infrastructure plan to the Legislature. This plan shall cover a five-fiscal-year period beginning with the fiscal year that is the same as that covered by the Governor's Budget with which it is being submitted.

The infrastructure plan shall contain the following information for the five years that it covers:

(a) (1) Identification of new, rehabilitated, modernized, improved, or renovated infrastructure requested by state agencies .

(2) Aggregate funding for transportation as identified in the four-year State Transportation Improvement Program Fund Estimate prepared pursuant to Sections 14524 and 14525.

(3) Infrastructure needs for Kindergarten through grade 12 public schools necessary to accommodate increased enrollment, class size reduction, and school modernization.

(4) The instructional and instructional support facilities needs for the University of California, the California State University, and the California Community Colleges.

(b) The estimated cost of providing the infrastructure identified in subdivision (a).

(c) A proposal for funding the infrastructure identified in subdivision (a), that includes all of the following :

(1) Criteria and priorities used to identify and select the infrastructure it does propose to fund, including criteria used to identify and select infrastructure that by January 1, 2005, shall be consistent with the state planning priorities specified pursuant to Section 65041.1 for infrastructure requested by state agencies pursuant to paragraph (1) of subdivision (a).

(2) Sources of funding, including, but not limited to, General Fund, state special funds, federal funds, general obligation bonds, lease revenue bonds, and installment purchases.

(3) An evaluation of the impact of the new state debt on the state's existing overall debt position if the plan proposes the issuance of new state debt.

(4) (A) Recommended specific projects for funding or the recommended type and amount of infrastructure to be funded in order to meet programmatic objectives that shall be identified in the proposal.

(B) Any capital outlay or local assistance appropriations intended to fund infrastructure included in the Governor's Budget shall derive from, and be encompassed by, the funding proposal contained in the plan.

SEC. 2. Section 13103 of the Government Code is amended to read:

13103. By January 1, 2005, if a state agency requests infrastructure pursuant to paragraph (1) of subdivision (a) of Section 13102, that agency shall specify how that infrastructure is consistent with the state planning priorities specified pursuant to Section 65041.1. The Governor may also order any entity of state government to assist in preparation of the infrastructure plan.

SEC. 3. Section 65041 of the Government Code is amended to read:

65041. The Governor shall prepare and thereafter shall cause to be maintained, regularly reviewed, and revised a comprehensive State Environmental Goals and Policy Report. In the preparation of the report, priority shall be given to the development of statewide land use policy, including the recommendations resulting from the land use planning and implementation program set forth in Section 65040.6, and including the recommendations of the Planning Advisory and Assistance Council established pursuant to subdivision (a) of Section 65040.6. The report shall contain, but not be limited to, the following:

(a) An overview, looking 20 to 30 years ahead, of state growth and development and a statement of approved state environmental goals and objectives, including those directed to land use, population growth and distribution, development, the conservation of natural resources, and air and water quality.

(b) Description of new and revised state policies, programs and other actions of the executive and legislative branches required to implement statewide environmental goals, including intermediate-range plans and

actions directed to natural resources, human resources and transportation.

(c) On and after January 1, 2004, any revision to the report shall provide that the goals are consistent with the state planning priorities specified pursuant to Section 65041.1.

SEC. 4. Section 65041.1 is added to the Government Code, to read:

65041.1. The state planning priorities, which are intended to promote equity, strengthen the economy, protect the environment, and promote public health and safety in the state, including in urban, suburban, and rural communities, shall be as follows:

(a) To promote infill development and equity by rehabilitating, maintaining, and improving existing infrastructure that supports infill development and appropriate reuse and redevelopment of previously developed, underutilized land that is presently served by transit, streets, water, sewer, and other essential services, particularly in underserved areas, and to preserving cultural and historic resources.

(b) To protect environmental and agricultural resources by protecting, preserving, and enhancing the state's most valuable natural resources, including working landscapes such as farm, range, and forest lands, natural lands such as wetlands, watersheds, wildlife habitats, and other wildlands, recreation lands such as parks, trails, greenbelts, and other open space, and landscapes with locally unique features and areas identified by the state as deserving special protection.

(c) To encourage efficient development patterns by ensuring that any infrastructure associated with development that is not infill supports new development that uses land efficiently, is built adjacent to existing developed areas to the extent consistent with the priorities specified pursuant to subdivision (b), is in an area appropriately planned for growth, is served by adequate transportation and other essential utilities and services, and minimizes ongoing costs to taxpayers.

SEC. 5. Section 65042 of the Government Code is amended to read:

65042. Every officer, agency, department, or instrumentality of state government shall do all of the following:

(a) Cooperate in the preparation and maintenance of the State Environmental Goals and Policy Report.

(b) By January 1, 2005, ensure that their entity's functional plan is consistent with the state planning priorities specified pursuant to Section 65041.1 and annually demonstrate to the office, and to the Department of Finance when requesting infrastructure pursuant to subdivision (a) of Section 13102, how the plans are consistent with those priorities.

(c) Comply with any request for advice, assistance, information or other material.

SEC. 6. Section 65048 of the Government Code is amended to read:

65048. The State Environmental Goals and Policy Report shall be revised, updated, and transmitted by the Governor to the Legislature every four years. Any revision on and after January 1, 2004, shall be consistent with the state planning priorities specified pursuant to Section 65041.1. The Governor, may at any time, inform and seek advice of the Legislature on proposed changes in state environmental goals, objectives, and policies.

SEC. 7. Section 65049 of the Government Code is amended to read:

65049. Following approval of the State Environmental Goals and Policy Report as provided in Section 65046, the report shall serve as a guide for state expenditures. In transmitting the annual budget to the Legislature, information shall be included relating proposed expenditures to the achievement of statewide goals and objectives set forth in the report.

SEC. 8. Section 65404 is added to the Government Code, to read:

65404. (a) On or before January 1, 2005, the Governor shall develop conflict resolution processes to do all of the following:

(1) Resolve conflicting requirements of two or more state agencies for a local plan, permit, or development project.

(2) Resolve conflicts between state functional plans.

(3) Resolve conflicts between state infrastructure projects.

(b) The conflict resolution process may be requested by a local agency, project applicant, or one or more state agencies.

SEC. 9. Section 66037 of the Government Code is amended to read:

66037. No action filed on or after January 1, 2006, shall be subject to this chapter unless a later enacted statute, which is chaptered before January 1, 2006, extends this date or deletes this section.

CHAPTER 1017

An act to add and repeal Article 9 (commencing with Section 5345) of Chapter 2 of Part 1 of Division 5 of the Welfare and Institutions Code, relating to mental health.

[Approved by Governor September 28, 2002. Filed with Secretary of State September 28, 2002.]

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

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

(a) On February 15, 2001, the Rand Corporation released a report, commissioned by the California Senate Committee on Rules, titled ‘‘The Effectiveness of Involuntary Outpatient Treatment: Empirical

Evidence and the Experience of Eight States,'' which is an evidence-based approach to examining and synthesizing empirical research on involuntary outpatient treatment.

(b) Rand's findings include the following:

(1) Data from the State Department of Mental Health's Client Data System, documenting about one-half of all commitments in California, indicate that 58,439 individuals accounted for 106,314 admissions under 72-hour holds, and, of those:

(A) Thirty-three and two-tenths percent, or 17,062, had at least one prior episode of involuntary commitment in the previous 12 months.

(B) Thirty-four and three-tenths percent, or 17,627, lived with a family member prior to the hold.

(C) Thirty-four and three-tenths percent, or 17,627, had a diagnosis of schizophrenia or other psychosis.

(D) Thirty-seven and two-tenths percent, or 19,118, had no record of outpatient service use in the previous 12 months.

(2) Some high-risk patients do not respond well to traditional community-based mental health services. For various reasons, even when treatment is made available, high-risk patients do not avail themselves of these services.

(3) In general, these ambulatory care data from the department's client data system do not support the assumption that individuals were entering the involuntary treatment system because they were not able to access outpatient services.

(4) The best evidence from randomized clinical trials supports the use of assertive community treatment (ACT) programs, which involve the delivery of community-based care by multidisciplinary teams of highly trained mental health professionals with high staff-to-client ratios. The evidence also suggests that fidelity to the ACT model ensures better client outcomes.

(5) A study by Duke University investigators, using randomized clinical trials, suggests that people with psychotic disorders and those at highest risk for poor outcomes benefit from intensive mental health services provided in concert with a sustained outpatient commitment order.

(6) The effect of sustained outpatient commitment, according to the Duke study, was particularly strong for people with schizophrenia and other psychotic disorders. When patients with these disorders were on outpatient commitment for an extended period of 180 days or more, and also received intensive mental health services, they had 72 percent fewer readmissions to the hospital and 28 fewer hospital days than the nonoutpatient commitment group.

SEC. 2. Article 9 (commencing with Section 5345) is added to Chapter 2 of Part 1 of Division 5 of the Welfare and Institutions Code, to read:

Article 9. The Assisted Outpatient Treatment Demonstration Project Act of 2002

5345. (a) This article shall be known, and may be cited, as Laura's Law.

(b) ''Assisted outpatient treatment'' shall be defined as categories of outpatient services that have been ordered by a court pursuant to Section 5346 or 5347.

5346. (a) In any county in which services are available as provided in Section 5348, a court may order a person who is the subject of a petition filed pursuant to this section to obtain assisted outpatient treatment if the court finds, by clear and convincing evidence, that the facts stated in the verified petition filed in accordance with this section are true and establish that all of the requisite criteria set forth in this section are met, including, but not limited to, each of the following:

(1) The person is 18 years of age or older.

(2) The person is suffering from a mental illness as defined in paragraphs (2) and (3) of subdivision (b) of Section 5600.3.

(3) There has been a clinical determination that the person is unlikely to survive safely in the community without supervision.

(4) The person has a history of lack of compliance with treatment for his or her mental illness, in that at least one of the following is true:

(A) The person's mental illness has, at least twice within the last 36 months, been a substantial factor in necessitating hospitalization, or receipt of services in a forensic or other mental health unit of a state correctional facility or local correctional facility, not including any period during which the person was hospitalized or incarcerated immediately preceding the filing of the petition.

(B) The person's mental illness has resulted in one or more acts of serious and violent behavior toward himself or herself or another, or threats, or attempts to cause serious physical harm to himself or herself or another within the last 48 months, not including any period in which the person was hospitalized or incarcerated immediately preceding the filing of the petition.

(5) The person has been offered an opportunity to participate in a treatment plan by the director of the local mental health department, or his or her designee, provided the treatment plan includes all of the services described in Section 5348, and the person continues to fail to engage in treatment.

(6) The person's condition is substantially deteriorating.

(7) Participation in the assisted outpatient treatment program would be the least restrictive placement necessary to ensure the person's recovery and stability.

(8) In view of the person's treatment history and current behavior, the person is in need of assisted outpatient treatment in order to prevent a relapse or deterioration that would be likely to result in grave disability or serious harm to himself or herself, or to others, as defined in Section 5150.

(9) It is likely that the person will benefit from assisted outpatient treatment.

(b) (1) A petition for an order authorizing assisted outpatient treatment may be filed by the county mental health director, or his or her designee, in the superior court in the county in which the person who is the subject of the petition is present or reasonably believed to be present.

(2) A request may be made only by any of the following persons to the county mental health department for the filing of a petition to obtain an order authorizing assisted outpatient treatment:

(A) Any person 18 years of age or older with whom the person who is the subject of the petition resides.

(B) Any person who is the parent, spouse, or sibling or child 18 years of age or older of the person who is the subject of the petition.

(C) The director of any public or private agency, treatment facility, charitable organization, or licensed residential care facility providing mental health services to the person who is the subject of the petition in whose institution the subject of the petition resides.

(D) The director of a hospital in which the person who is the subject of the petition is hospitalized.

(E) A licensed mental health treatment provider who is either supervising the treatment of, or treating for a mental illness, the person who is the subject of the petition.

(F) A peace officer, parole officer, or probation officer assigned to supervise the person who is the subject of the petition.

(3) Upon receiving a request pursuant to paragraph (2), the county mental health director shall conduct an investigation into the appropriateness of the filing of the petition. The director shall file the petition only if he or she determines that there is a reasonable likelihood that all the necessary elements to sustain the petition can be proven in a court of law by clear and convincing evidence.

(4) The petition shall state all of the following:

(A) Each of the criteria for assisted outpatient treatment as set forth in subdivision (a).

(B) Facts that support the petitioner's belief that the person who is the subject of the petition meets each criterion, provided that the hearing on the petition shall be limited to the stated facts in the verified petition, and

the petition contains all the grounds on which the petition is based, in order to ensure adequate notice to the person who is the subject of the petition and his or her counsel.

(C) That the person who is the subject of the petition is present, or is reasonably believed to be present, within the county where the petition is filed.

(D) That the person who is the subject of the petition has the right to be represented by counsel in all stages of the proceeding under the petition, in accordance with subdivision (c).

(5) The petition shall be accompanied by an affidavit of a licensed mental health treatment provider designated by the local mental health director who shall state, if applicable, either of the following:

(A) That the licensed mental health treatment provider has personally examined the person who is the subject of the petition no more than 10 days prior to the submission of the petition, the facts and reasons why the person who is the subject of the petition meets the criteria in subdivision (a), that the licensed mental health treatment provider recommends assisted outpatient treatment for the person who is the subject of the petition, and that the licensed mental health treatment provider is willing and able to testify at the hearing on the petition.

(B) That no more than 10 days prior to the filing of the petition, the licensed mental health treatment provider, or his or her designee, has made appropriate attempts to elicit the cooperation of the person who is the subject of the petition, but has not been successful in persuading that person to submit to an examination, that the licensed mental health treatment provider has reason to believe that the person who is the subject of the petition meets the criteria for assisted outpatient treatment, and that the licensed mental health treatment provider is willing and able to examine the person who is the subject of the petition and testify at the hearing on the petition.

(c) The person who is the subject of the petition shall have the right to be represented by counsel at all stages of a proceeding commenced under this section. If the person so elects, the court shall immediately appoint the public defender or other attorney to assist the person in all stages of the proceedings. The person shall pay the cost of the legal services if he or she is able.

(d) (1) Upon receipt by the court of a petition submitted pursuant to subdivision (b), the court shall fix the date for a hearing at a time not later than five days from the date the petition is received by the court, excluding Saturdays, Sundays, and holidays. The petitioner shall promptly cause service of a copy of the petition, together with written notice of the hearing date, to be made personally on the person who is the subject of the petition, and shall send a copy of the petition and notice to the county office of patient rights, and to the current health care

provider appointed for the person who is the subject of the petition, if any such provider is known to the petitioner. Continuances shall be permitted only for good cause shown. In granting continuances, the court shall consider the need for further examination by a physician or the potential need to provide expeditiously assisted outpatient treatment. Upon the hearing date, or upon any other date or dates to which the proceeding may be continued, the court shall hear testimony. If it is deemed advisable by the court, and if the person who is the subject of the petition is available and has received notice pursuant to this section, the court may examine in or out of court the person who is the subject of the petition who is alleged to be in need of assisted outpatient treatment. If the person who is the subject of the petition does not appear at the hearing, and appropriate attempts to elicit the attendance of the person have failed, the court may conduct the hearing in the person's absence. If the hearing is conducted without the person present, the court shall set forth the factual basis for conducting the hearing without the person's presence.

(2) The court shall not order assisted outpatient treatment unless an examining licensed mental health treatment provider, who has personally examined, and has reviewed the available treatment history of, the person who is the subject of the petition within the time period commencing 10 days before the filing of the petition, testifies in person at the hearing.

(3) If the person who is the subject of the petition has refused to be examined by a licensed mental health treatment provider, the court may request that the person consent to an examination by a licensed mental health treatment provider appointed by the court. If the person who is the subject of the petition does not consent and the court finds reasonable cause to believe that the allegations in the petition are true, the court may order any person designated under Section 5150 to take into custody the person who is the subject of the petition and transport him or her, or cause him or her to be transported, to a hospital for examination by a licensed mental health treatment provider as soon as is practicable. Detention of the person who is the subject of the petition under the order may not exceed 72 hours. If the examination is performed by another licensed mental health treatment provider, the examining licensed mental health treatment provider may consult with the licensed mental health treatment provider whose affirmation or affidavit accompanied the petition regarding the issues of whether the allegations in the petition are true and whether the person meets the criteria for assisted outpatient treatment.

(4) The person who is the subject of the petition shall have all of the following rights:

(A) To adequate notice of the hearings to the person who is the subject of the petition, as well as to parties designated by the person who is the subject of the petition.

(B) To receive a copy of the court-ordered evaluation.

(C) To counsel. If the person has not retained counsel, the court shall appoint a public defender.

(D) To be informed of his or her right to judicial review by habeas corpus.

(E) To be present at the hearing unless he or she waives the right to be present.

(F) To present evidence.

(G) To call witnesses on his or her behalf.

(H) To cross-examine witnesses.

(I) To appeal decisions, and to be informed of his or her right to appeal.

(5) (A) If after hearing all relevant evidence, the court finds that the person who is the subject of the petition does not meet the criteria for assisted outpatient treatment, the court shall dismiss the petition.

(B) If after hearing all relevant evidence, the court finds that the person who is the subject of the petition meets the criteria for assisted outpatient treatment, and there is no appropriate and feasible less restrictive alternative, the court may order the person who is the subject of the petition to receive assisted outpatient treatment for an initial period not to exceed six months. In fashioning the order, the court shall specify that the proposed treatment is the least restrictive treatment appropriate and feasible for the person who is the subject of the petition. The order shall state the categories of assisted outpatient treatment, as set forth in Section 5348, that the person who is the subject of the petition is to receive, and the court may not order treatment that has not been recommended by the examining licensed mental health treatment provider and included in the written treatment plan for assisted outpatient treatment as required by subdivision (e). If the person has executed an advance health care directive pursuant to Chapter 2 (commencing with Section 4650) of Part 1 of Division 4.7 of the Probate Code, any directions included in the advance health care directive shall be considered in formulating the written treatment plan.

(6) If the person who is the subject of a petition for an order for assisted outpatient treatment pursuant to subparagraph (B) of paragraph (5) of subdivision (d) refuses to participate in the assisted outpatient treatment program, the court may order the person to meet with the assisted outpatient treatment team designated by the director of the assisted outpatient treatment program. The treatment team shall attempt to gain the person's cooperation with treatment ordered by the court. The person may be subject to a 72-hour hold pursuant to subdivision (f) only

after the treatment team has attempted to gain the person's cooperation with treatment ordered by the court, and has been unable to do so.

(e) Assisted outpatient treatment shall not be ordered unless the licensed mental health treatment provider recommending assisted outpatient treatment to the court has submitted to the court a written treatment plan that includes services as set forth in Section 5348, and the court finds, in consultation with the county mental health director, or his or her designee, all of the following:

(1) That the services are available from the county, or a provider approved by the county, for the duration of the court order.

(2) That the services have been offered to the person by the local director of mental health, or his or her designee, and the person has been given an opportunity to participate on a voluntary basis, and the person has failed to engage in, or has refused, treatment.

(3) That all of elements of the petition required by this article have been met.

(4) That the treatment plan will be delivered to the county director of mental health, or to his or her appropriate designee.

(f) If, in the clinical judgment of a licensed mental health treatment provider, the person who is the subject of the petition has failed or has refused to comply with the treatment ordered by the court, and, in the clinical judgment of the licensed mental health treatment provider, efforts were made to solicit compliance, and, in the clinical judgment of the licensed mental health treatment provider, the person may be in need of involuntary admission to a hospital for evaluation, the provider may request that persons designated under Section 5150 take into custody the person who is the subject of the petition and transport him or her, or cause him or her to be transported, to a hospital, to be held up to 72 hours for examination by a licensed mental health treatment provider to determine if the person is in need of treatment pursuant to Section 5150. Any continued involuntary retention in a hospital beyond the initial 72-hour period shall be pursuant to Section 5150. If at any time during the 72-hour period the person is determined not to meet the criteria of Section 5150, and does not agree to stay in the hospital as a voluntary patient, he or she shall be released and any subsequent involuntary detention in a hospital shall be pursuant to Section 5150. Failure to comply with an order of assisted outpatient treatment alone may not be grounds for involuntary civil commitment or a finding that the person who is the subject of the petition is in contempt of court.

(g) If the director of the assisted outpatient treatment program determines that the condition of the patient requires further assisted outpatient treatment, the director shall apply to the court, prior to the expiration of the period of the initial assisted outpatient treatment order, for an order authorizing continued assisted outpatient treatment for a

period not to exceed 180 days from the date of the order. The procedures for obtaining any order pursuant to this subdivision shall be in accordance with subdivisions (a) to (f), inclusive. The period for further involuntary outpatient treatment authorized by any subsequent order under this subdivision may not exceed 180 days from the date of the order.

(h) At intervals of not less than 60 days during an assisted outpatient treatment order, the director of the outpatient treatment program shall file an affidavit with the court that ordered the outpatient treatment affirming that the person who is the subject of the order continues to meet the criteria for assisted outpatient treatment. At these times, the person who is the subject of the order shall have the right to a hearing on whether or not he or she still meets the criteria for assisted outpatient treatment if he or she disagrees with the director's affidavit. The burden of proof shall be on the director.

(i) During each 60-day period specified in subdivision (h), if the person who is the subject of the order believes that he or she is being wrongfully retained in the assisted outpatient treatment program against his or her wishes, he or she may file a petition for a writ of habeas corpus, thus requiring the director of the assisted outpatient treatment program to prove that the person who is the subject of the order continues to meet the criteria for assisted outpatient treatment.

(j) Any person ordered to undergo assisted outpatient treatment pursuant to this article, who was not present at the hearing at which the order was issued, may immediately petition the court for a writ of habeas corpus. Treatment under the order for assisted outpatient treatment may not commence until the resolution of that petition.

5347. (a) In any county in which services are available pursuant to Section 5348, any person who is determined by the court to be subject to subdivision (a) of Section 5346 may voluntarily enter into an agreement for services under this section.

(b) (1) After a petition for an order for assisted outpatient treatment is filed, but before the conclusion of the hearing on the petition, the person who is the subject of the petition, or the person's legal counsel with the person's consent, may waive the right to an assisted outpatient treatment hearing for the purpose of obtaining treatment under a settlement agreement, provided that an examining licensed mental health treatment provider states that the person can survive safely in the community. The settlement agreement may not exceed 180 days in duration and shall be agreed to by all parties.

(2) The settlement agreement shall be in writing, shall be approved by the court, and shall include a treatment plan developed by the community-based program that will provide services that provide

treatment in the least restrictive manner consistent with the needs of the person who is the subject of the petition.

(3) Either party may request that the court modify the treatment plan at any time during the 180-day period.

(4) The court shall designate the appropriate county department to monitor the person's treatment under, and compliance with, the settlement agreement. If the person fails to comply with the treatment according to the agreement, the designated county department shall notify the counsel designated by the county and the person's counsel of the person's noncompliance.

(5) A settlement agreement approved by the court pursuant to this section shall have the same force and effect as an order for assisted outpatient treatment pursuant to Section 5346.

(6) At a hearing on the issue of noncompliance with the agreement, the written statement of noncompliance submitted shall be prima facie evidence that a violation of the conditions of the agreement has occurred. If the person who is the subject of the petition denies any of the facts as stated in the statement, he or she has the burden of proving by a preponderance of the evidence that the alleged facts are false.

5348. (a) For purposes of subdivision (e) of Section 5346, any county that chooses to provide assisted outpatient treatment services pursuant to this article shall offer assisted outpatient treatment services including, but not limited to, all of the following:

(1) Community-based, mobile, multidisciplinary, highly trained mental health teams that use high staff-to-client ratios of no more than 10 clients per team member for those subject to court-ordered services pursuant to Section 5346.

(2) A service planning and delivery process that includes the following:

(A) Determination of the numbers of persons to be served and the programs and services that will be provided to meet their needs. The local director of mental health shall consult with the sheriff, the police chief, the probation officer, the mental health board, contract agencies, and family, client, ethnic, and citizen constituency groups as determined by the director.

(B) Plans for services, including outreach to families whose severely mentally ill adult is living with them, design of mental health services, coordination and access to medications, psychiatric and psychological services, substance abuse services, supportive housing or other housing assistance, vocational rehabilitation, and veterans' services. Plans shall also contain evaluation strategies, that shall consider cultural, linguistic, gender, age, and special needs of minorities in the target populations. Provision shall be made for staff with the cultural background and linguistic skills necessary to remove barriers to mental health services

as a result of having limited-English-speaking ability and cultural differences. Recipients of outreach services may include families, the public, primary care physicians, and others who are likely to come into contact with individuals who may be suffering from an untreated severe mental illness who would be likely to become homeless if the illness continued to be untreated for a substantial period of time. Outreach to adults may include adults voluntarily or involuntarily hospitalized as a result of a severe mental illness.

(C) Provisions for services to meet the needs of persons who are physically disabled.

(D) Provision for services to meet the special needs of older adults.

(E) Provision for family support and consultation services, parenting support and consultation services, and peer support or self-help group support, where appropriate.

(F) Provision for services to be client-directed and that employ psychosocial rehabilitation and recovery principles.

(G) Provision for psychiatric and psychological services that are integrated with other services and for psychiatric and psychological collaboration in overall service planning.

(H) Provision for services specifically directed to seriously mentally ill young adults 25 years of age or younger who are homeless or at significant risk of becoming homeless. These provisions may include continuation of services that would still be received through other funds had eligibility not been terminated as a result of age.

(I) Services reflecting special needs of women from diverse cultural backgrounds, including supportive housing that accepts children, personal services coordinator therapeutic treatment, and substance treatment programs that address gender specific trauma and abuse in the lives of persons with mental illness, and vocational rehabilitation programs that offer job training programs free of gender bias and sensitive to the needs of women.

(J) Provision for housing for clients that is immediate, transitional, permanent, or all of these.

(K) Provision for clients who have been suffering from an untreated severe mental illness for less than one year, and who do not require the full range of services, but are at risk of becoming homeless unless a comprehensive individual and family support services plan is implemented. These clients shall be served in a manner that is designed to meet their needs.

(3) Each client shall have a clearly designated mental health personal services coordinator who may be part of a multidisciplinary treatment team who is responsible for providing or assuring needed services. Responsibilities include complete assessment of the client's needs, development of the client's personal services plan, linkage with all

appropriate community services, monitoring of the quality and follow through of services, and necessary advocacy to ensure each client receives those services which are agreed to in the personal services plan. Each client shall participate in the development of his or her personal services plan, and responsible staff shall consult with the designated conservator, if one has been appointed, and, with the consent of the client, shall consult with the family and other significant persons as appropriate.

(4) The individual personal services plan shall ensure that persons subject to assisted outpatient treatment programs receive age, gender, and culturally appropriate services, to the extent feasible, that are designed to enable recipients to:

(A) Live in the most independent, least restrictive housing feasible in the local community, and, for clients with children, to live in a supportive housing environment that strives for reunification with their children or assists clients in maintaining custody of their children as is appropriate.

(B) Engage in the highest level of work or productive activity appropriate to their abilities and experience.

(C) Create and maintain a support system consisting of friends, family, and participation in community activities.

(D) Access an appropriate level of academic education or vocational training.

(E) Obtain an adequate income.

(F) Self-manage their illnesses and exert as much control as possible over both the day-to-day and long-term decisions that affect their lives.

(G) Access necessary physical health care and maintain the best possible physical health.

(H) Reduce or eliminate serious antisocial or criminal behavior, and thereby reduce or eliminate their contact with the criminal justice system.

(I) Reduce or eliminate the distress caused by the symptoms of mental illness.

(J) Have freedom from dangerous addictive substances.

(5) The individual personal services plan shall describe the service array that meets the requirements of paragraph (4), and to the extent applicable to the individual, the requirements of paragraph (2).

(b) Any county that provides assisted outpatient treatment services pursuant to this article also shall offer the same services on a voluntary basis.

(c) Involuntary medication shall not be allowed absent a separate order by the court pursuant to Sections 5332 to 5336, inclusive.

(d) Each county that operates an assisted outpatient treatment program pursuant to this article shall provide data to the State Department of Mental Health and, based on the data, the department

shall report to the Legislature on or before May 1 of each year in which the county provides services pursuant to this article. The report shall include, at a minimum, an evaluation of the effectiveness of the strategies employed by each program operated pursuant to this article in reducing homelessness and hospitalization of persons in the program and in reducing involvement with local law enforcement by persons in the program. The evaluation and report shall also include any other measures identified by the department regarding persons in the program and all of the following, based on information that is available:

(1) The number of persons served by the program and, of those, the number who are able to maintain housing and the number who maintain contact with the treatment system.

(2) The number of persons in the program with contacts with local law enforcement, and the extent to which local and state incarceration of persons in the program has been reduced or avoided.

(3) The number of persons in the program participating in employment services programs, including competitive employment.

(4) The days of hospitalization of persons in the program that have been reduced or avoided.

(5) Adherence to prescribed treatment by persons in the program.

(6) Other indicators of successful engagement, if any, by persons in the program.

(7) Victimization of persons in the program.

(8) Violent behavior of persons in the program.

(9) Substance abuse by persons in the program.

(10) Type, intensity, and frequency of treatment of persons in the program.

(11) Extent to which enforcement mechanisms are used by the program, when applicable.

(12) Social functioning of persons in the program.

(13) Skills in independent living of persons in the program.

(14) Satisfaction with program services both by those receiving them and by their families, when relevant.

5349. This article shall be operative in those counties in which the county board of supervisors, by resolution, authorizes its application and makes a finding that no voluntary mental health program serving adults, and no children's mental health program, may be reduced as a result of the implementation of this article. Compliance with this section shall be monitored by the State Department of Mental Health as part of its review and approval of county Short-Doyle plans.

5349.1. (a) Counties that elect to implement this article, shall, in consultation with the department, client and family advocacy organizations, and other stakeholders, develop a training and education program for purposes of improving the delivery of services to mentally

ill individuals who are, or who are at risk of being, involuntarily committed under this part. This training shall be provided to mental health treatment providers contracting with participating counties and to other individuals, including, but not limited to, mental health professionals, law enforcement officials, and certification hearing officers involved in making treatment and involuntary commitment decisions.

(b) The training shall include both of the following:

(1) Information relative to legal requirements for detaining a person for involuntary inpatient and outpatient treatment, including criteria to be considered with respect to determining if a person is considered to be gravely disabled.

(2) Methods for ensuring that decisions regarding involuntary treatment as provided for in this part direct patients toward the most effective treatment. Training shall include an emphasis on each patient's right to provide informed consent to assistance.

5349.5. This article shall remain in effect only until January 1, 2008, and as of that date is repealed, unless a later enacted statute that is enacted on or before January 1, 2008, deletes or extends that date.

CHAPTER 1018

An act to repeal and add Chapter 5.5 (commencing with Section 6400) of Division 3 of the Business and Professions Code, relating to legal assistants.

[Approved by Governor September 28, 2002. Filed with Secretary of State September 28, 2002.]

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

SECTION 1. Chapter 5.5 (commencing with Section 6400) of Division 3 of the Business and Professions Code is repealed.

SEC. 2. Chapter 5.5 (commencing with Section 6400) is added to Division 3 of the Business and Professions Code, to read:

CHAPTER 5.5. LEGAL DOCUMENT ASSISTANTS AND UNLAWFUL DETAINER ASSISTANTS

Article 1. General Provisions

6400. (a) ''Unlawful detainer assistant'' means any individual who for compensation renders assistance or advice in the prosecution or

defense of an unlawful detainer claim or action, including any bankruptcy petition that may affect the unlawful detainer claim or action.

(b) ''Unlawful detainer claim'' means a proceeding, filing, or action affecting rights or liabilities of any person that arises under Chapter 4 (commencing with Section 1159) of Title 3 of Part 3 of the Code of Civil Procedure and that contemplates an adjudication by a court.

(c) ''Legal document assistant'' means:

(1) Any person who is not exempted under Section 6401 and who provides, or assists in providing, or offers to provide, or offers to assist in providing, for compensation, any self-help service to a member of the public who is representing himself or herself in a legal matter, or who holds himself or herself out as someone who offers that service or has that authority. This paragraph does not apply to any individual whose assistance consists merely of secretarial or receptionist services.

(2) A corporation, partnership, association, or other entity that employs or contracts with any person not exempted under Section 6401 who, as part of his or her responsibilities, provides, or assists in providing, or offers to provide, or offers to assist in providing, for compensation, any self-help service to a member of the public who is representing himself or herself in a legal matter or holds himself or herself out as someone who offers that service or has that authority. This paragraph does not apply to an individual whose assistance consists merely of secretarial or receptionist services.

(d) ''Self-help service'' means all of the following:

(1) Completing legal documents in a ministerial manner, selected by a person who is representing himself or herself in a legal matter, by typing or otherwise completing the documents at the person's specific direction.

(2) Providing general published factual information that has been written or approved by an attorney, pertaining to legal procedures, rights, or obligations to a person who is representing himself or herself in a legal matter, to assist the person in representing himself or herself. This service in and of itself, shall not require registration as a legal document assistant.

(3) Making published legal documents available to a person who is representing himself or herself in a legal matter.

(4) Filing and serving legal forms and documents at the specific direction of a person who is representing himself or herself in a legal matter.

(e) ''Compensation'' means money, property, or anything else of value.

(f) A legal document assistant, including any legal document assistant employed by a partnership or corporation, may not provide any self-help service for compensation, unless the legal document assistant

is registered in the county in which his or her principal place of business is located and in any other county in which he or she performs acts for which registration is required.

(g) A legal document assistant may not provide any kind of advice, explanation, opinion, or recommendation to a consumer about possible legal rights, remedies, defenses, options, selection of forms, or strategies. A legal document assistant shall complete documents only in the manner prescribed by paragraph (1) of subdivision (d).

6401. This chapter does not apply to any person engaged in any of the following occupations, provided that the person does not also perform the duties of a legal document assistant in addition to those occupations:

(a) Any government employee who is acting in the course of his or her employment.

(b) A member of the State Bar of California, or his or her employee, paralegal, or agent, or an independent contractor while acting on behalf of a member of the State Bar.

(c) Any employee of a nonprofit, tax-exempt corporation who either assists clients free of charge or is supervised by a member of the State Bar of California who has malpractice insurance.

(d) A licensed real estate broker or licensed real estate salesperson, as defined in Chapter 3 (commencing with Section 10130) of Part 1 of Division 4, who acts pursuant to subdivision (b) of Section 10131 on an unlawful detainer claim as defined in subdivision (b) of Section 6400, and who is a party to the unlawful detainer action.

(e) An immigration consultant, as defined in Chapter 19.5 (commencing with Section 22441) of Division 8.

(f) A person registered as a process server under Chapter 16 (commencing with Section 22350) or a person registered as a professional photocopier under Chapter 20 (commencing with Section 22450) of Division 8.

(g) A person who provides services relative to the preparation of security instruments or conveyance documents as an integral part of the provision of title or escrow service.

(h) A person who provides services that are regulated by federal law.

(i) A person who is employed by, and provides services to, a supervised financial institution, holding company, subsidiary, or affiliate.

6401.5. This chapter does not sanction, authorize, or encourage the practice of law by nonlawyers. Registration under this chapter, or an exemption from registration, does not immunize any person from prosecution or liability pursuant to Section 6125, 6126, 6126.5, or 6127.

6401.6. A legal document assistant may not provide service to a client who requires assistance that exceeds the definition of self-help

service in subdivision (d) of Section 6400, and shall inform the client that the client requires the services of an attorney.

Article 2. Registration Procedures

6402. A legal document assistant or unlawful detainer assistant shall be registered pursuant to this chapter by the county clerk in the county in which his or her principal place of business is located (deemed primary registration), and in any other county in which he or she performs acts for which registration is required (deemed secondary registration). Any registration in a county, other than the county of the person's place of business, shall state the person's principal place of business and provide proof that the registrant has satisfied the bonding requirement of Section 6405. No person who has been disbarred or suspended from the practice of law pursuant to Article 6 (commencing with Section 6100) of Chapter 4 may, during the period of any disbarment or suspension, register as a legal document assistant or unlawful detainer assistant. The Department of Consumer Affairs shall develop the application required to be completed by a person for purposes of registration as a legal document assistant. The application shall specify the types of proof that the applicant shall provide to the county clerk in order to demonstrate the qualifications and requirements of Section 6402.1.

6402.1. To be eligible to apply for registration under this chapter as a legal document assistant, the applicant shall possess at least one of the following:

(a) A high school diploma or general equivalency diploma, and either a minimum of two years of law-related experience under the supervision of a licensed attorney, or a minimum of two years experience, prior to January 1, 1999, providing self-help service.

(b) A baccalaureate degree in any field and either a minimum of one year of law-related experience under the supervision of a licensed attorney, or a minimum of one year of experience, prior to January 1, 1999, providing self-help service.

(c) A certificate of completion from a paralegal program that is institutionally accredited but not approved by the American Bar Association, that requires successful completion of a minimum of 24 semester units, or the equivalent, in legal specialization courses.

(d) A certificate of completion from a paralegal program approved by the American Bar Association.

6403. (a) The application for registration of a natural person shall contain all of the following statements about the applicant:

(1) Name, age, address, and telephone number.

(2) Whether he or she has been convicted of a felony, or of a misdemeanor under Section 6126 or 6127, or found liable under Section 6126.5.

(3) Whether he or she has been held liable in a civil action by final judgment or entry of a stipulated judgment, if the action alleged fraud, the use of an untrue or misleading representation, or the use of an unfair, unlawful, or deceptive business practice.

(4) Whether he or she has ever been convicted of a misdemeanor violation of this chapter.

(5) Whether he or she has had a civil judgment entered against him or her in an action arising out of the applicant's negligent, reckless, or willful failure to properly perform his or her obligation as a legal document assistant or unlawful detainer assistant.

(6) Whether he or she has had a registration revoked pursuant to Section 6413.

(7) Whether this is a primary or secondary registration. If it is a secondary registration, the county in which the primary registration is filed.

(b) The application for registration of a natural person shall be accompanied by the display of personal identification, such as a California driver's license, birth certificate, or other identification acceptable to the county clerk to adequately determine the identity of the applicant.

(c) The application for registration of a partnership or corporation shall contain all of the following statements about the applicant:

(1) The names, ages, addresses, and telephone numbers of the general partners or officers.

(2) Whether the general partners or officers have ever been convicted of a felony, or a misdemeanor under Section 6126 or 6127 or found liable under Section 6126.5.

(3) Whether the general partners or officers have ever been held liable in a civil action by final judgment or entry of a stipulated judgment, if the action alleged fraud, the use of an untrue or misleading representation, or the use of an unfair, unlawful, or deceptive business practice.

(4) Whether the general partners or officers have ever been convicted of a misdemeanor violation of this chapter.

(5) Whether the general partners or officers have had a civil judgment entered against them in an action arising out of a negligent, reckless, or willful failure to properly perform the obligations of a legal document assistant or unlawful detainer assistant.

(6) Whether the general partners or officers have ever had a registration revoked pursuant to Section 6413.

(7) Whether this is a primary or secondary registration. If it is a secondary registration, the county in which the primary registration is filed.

(d) The applications made under this section shall be made under penalty of perjury.

6404. An applicant shall pay a fee of one hundred seventy-five dollars ($175) to the county clerk at the time he or she files an application for initial registration, including a primary or secondary registration, or renewal of registration. An additional fee of ten dollars ($10) shall be paid to the county clerk for each additional identification card.

6405. (a) (1) An application for a certificate of registration by an individual shall be accompanied by a bond of twenty-five thousand dollars ($25,000) executed by a corporate surety qualified to do business in this state and conditioned upon compliance with this chapter. The total aggregate liability on the bond shall be limited to twenty-five thousand dollars ($25,000). An application for secondary registration shall meet all of the requirements of this subdivision, except that in place of posting another original bond or cash deposit, the applicant shall include a certified copy of the bond or cash deposit posted in the county in which the applicant filed the primary registration.

(2) An application for a certificate of registration by a partnership or corporation shall be accompanied by a bond executed by a corporate surety qualified to do business in this state and conditioned upon compliance with this chapter in the following amount, based on the total number of legal document assistants and unlawful detainer assistants employed by the partnership or corporation:

(A) Twenty-five thousand dollars ($25,000) for one to four assistants.

(B) Fifty thousand dollars ($50,000) for five to nine assistants.

(C) One hundred thousand dollars ($100,000) for 10 or more assistants. An application for a certificate of registration by a person employed by a partnership or corporation shall be accompanied by a bond of twenty-five thousand dollars ($25,000) only if the partnership or corporation has not posted a bond in the amount required by this subdivision. An application for secondary registration shall meet all of the requirements of this subdivision, except that in place of posting another original bond or cash deposit, the applicant shall include a certified copy of the bond or cash deposit posted in the county in which the applicant filed the primary registration.

(3) If a partnership or corporation increases the number of assistants it employs above the number stated in its application for a certificate of registration, the partnership or corporation shall promptly increase the bond to the applicable amount in subparagraphs (B) or (C) of paragraph (2) based on the actual number of assistants it employs, and shall promptly submit the increased bond to the county clerk. The partnership

or corporation shall promptly send a certified copy of the increased bond to the county clerk in any county of secondary registration.

(4) The bond may be terminated pursuant to Section 995.440 of, and Article 13 (commencing with Section 996.310) of Chapter 2 of Title 14 of Part 2 of, the Code of Civil Procedure.

(b) The county clerk shall, upon filing of the bond, deliver the bond forthwith to the county recorder for recording. The recording fee specified in Section 27361 of the Government Code shall be paid by the registrant. The fee may be paid to the county clerk who shall transmit it to the recorder.

(c) The fee for filing, canceling, revoking, or withdrawing the bond is seven dollars ($7).

(d) The county recorder shall record the bond and any notice of cancellation, revocation, or withdrawal of the bond, and shall thereafter mail the instrument, unless specified to the contrary, to the person named in the instrument and, if no person is named, to the party leaving it for recording. The recording fee specified in Section 27361 of the Government Code for notice of cancellation, revocation, or withdrawal of the bond shall be paid to the county clerk, who shall transmit it to the county recorder.

(e) In lieu of the bond required by subdivision (a), a registrant may deposit the amount required by subdivision (a) in cash with the county clerk.

(f) If the certificate is revoked, the bond or cash deposit shall be returned to the bonding party or depositor subject to subdivision (g) and the right of a person to recover against the bond or cash deposit under Section 6412.

(g) The county clerk may retain a cash deposit until the expiration of three years from the date the registrant has ceased to do business, or three years from the expiration or revocation date of the registration, in order to ensure there are no outstanding claims against the deposit. A judge may order the return of the deposit prior to the expiration of three years upon evidence satisfactory to the judge that there are no outstanding claims against the deposit.

(h) The bond required by this section shall be in favor of the State of California for the benefit of any person who is damaged as a result of the violation of this chapter or by the fraud, dishonesty, or incompetency of an individual, partnership, or corporation registered under this chapter. The bond required by this section shall also indicate the name of the county in which it will be filed.

6406. (a) If granted, a certificate of registration shall be effective for a period of two years, until the date the bond expires, or until the total number of legal document assistants and unlawful detainer assistants employed by a partnership or corporation exceeds the number allowed

for the amount of the bond in effect, whichever occurs first. Thereafter, a registrant shall file a new certificate of registration or a renewal of the certificate of registration and pay the fee required by Section 6404, and increase the amount of the bond if required to comply with subdivision (a) of Section 6405. A certificate of registration that is currently effective may be renewed up to 60 days prior to its expiration date and the effective date of the renewal shall be the date the current registration expires. The renewal shall be effective for a period of two years from the effective date or until the expiration date of the bond, or until the total number of legal document assistants and unlawful detainer assistants employed by a partnership or corporation exceeds the number allowed for the dollar amount of the bond in effect, whichever occurs first.

(b) Except as provided in subdivisions (d) to (f), inclusive, an applicant shall be denied registration or renewal of registration if the applicant has been any of the following:

(1) Convicted of a felony, or of a misdemeanor under Section 6126 or 6127, or found liable under Section 6126.5.

(2) Held liable in a civil action by final judgment or entry of a stipulated judgment, if the action alleged fraud, or the use of an untrue or misleading representation, or the use of an unfair, unlawful, or deceptive business practice.

(3) Convicted of a misdemeanor violation of this chapter.

(4) Had a civil judgment entered against him or her in an action arising out of the applicant's negligent, reckless, or willful failure to properly perform his or her obligation as a legal document assistant or unlawful detainer assistant.

(5) Had his or her registration revoked pursuant to Section 6413.

(c) If the county clerk finds that the applicant has failed to demonstrate having met the requisite requirements of Section 6402 or 6402.1, or that any of the paragraphs of subdivision (b) apply, the county clerk, within three business days of submission of the application and fee, shall return the application and fee to the applicant with a notice to the applicant indicating the reason for the denial and the method of appeal.

(d) The denial of an application may be appealed by the applicant by submitting, to the director, the following:

(1) The completed application and notice from the county clerk specifying the reasons for the denial of the application.

(2) A copy of any final judgment or order that resulted from any conviction or civil judgment listed on the application.

(3) Any relevant information the applicant wishes to include for the record.

(e) The director shall order the applicant's certificate of registration to be granted if the director determines that the issuance of a certificate

of registration is not likely to expose consumers to a significant risk of harm based on a review of the application and any other information relating to the applicant's unlawful act or unfair practice described in paragraphs (1) to (5), inclusive, of subdivision (b). The director shall order the applicant's certificate of registration to be denied if the director determines that issuance of a certificate of registration is likely to expose consumers to a significant risk of harm based on a review of the application and any other information relating to the applicant's unlawful act or unfair practice described in paragraphs (1) to (5), inclusive, of subdivision (b). The director shall send to the applicant and the county clerk a written decision listing the reasons registration shall be granted or denied within 30 days of the submission of the matter.

(f) If the director orders that the certificate of registration be granted, the applicant may resubmit the application, with the appropriate application fee and the written decision of the director. The county clerk shall grant the certificate of registration to the applicant within three business days of being supplied this information.

6407. (a) The county clerk shall maintain a register of legal document assistants, and a register of unlawful detainer assistants, assign a unique number to each legal document assistant, or unlawful detainer assistant, and issue an identification card to each one. Additional cards for employees of legal document assistants or unlawful detainer assistants shall be issued upon the payment of ten dollars ($10) for each card. Upon renewal of registration, the same number shall be assigned, provided there is no lapse in the period of registration.

(b) The identification card shall be a card $3\frac{1}{2}$ by $2\frac{1}{4}$ inches, and shall contain at the top, the title ''Legal Document Assistant'' or ''Unlawful Detainer Assistant,'' as appropriate, followed by the registrant's name, address, registration number, date of expiration, and county of registration. It shall also contain a photograph of the registrant in the lower left corner. The front of the card, above the title, shall also contain the following statement in 12-point boldface type: ''This person is not a lawyer.'' The front of the card, at the bottom, shall also contain the following statement in 12-point boldface type: ''The county clerk has not evaluated this person's knowledge, experience, or services.''

Article 3. Conduct of Business and Prohibited Acts

6408. The registrant's name, business address, telephone number, registration number, expiration date of the registration, and county of registration shall appear in any solicitation or advertisement, and on any papers or documents prepared or used by the registrant, including, but not limited to, contracts, letterhead, business cards, correspondence,

documents, forms, claims, petitions, checks, receipts, money orders, and pleadings.

6408.5. (a) All advertisements or solicitations published, distributed, or broadcast offering legal document assistant or unlawful detainer assistant services shall include the following statement: ''I am not an attorney. I can only provide self help services at your specific direction.'' This subdivision does not apply to classified or ''yellow pages'' listings in a telephone or business directory of three lines or less that state only the name, address, and telephone number of the legal document assistant or unlawful detainer assistant.

(b) If the advertisement or solicitation is in a language other than English, the statement required by subdivision (a) shall be in the same language as the advertisement or solicitation.

6409. No legal document assistant or unlawful detainer assistant shall retain in his or her possession original documents of a client. A legal document assistant or an unlawful detainer assistant shall immediately return all of a client's original documents to the client in any one or more of the following circumstances:

(a) If the client so requests at any time.

(b) If the written contract required by Section 6410 is not executed or is rescinded, canceled, or voided for any reason.

(c) If the services described pursuant to paragraph (1) of subdivision (b) of Section 6410 have been completed.

6410. (a) Every legal document assistant or unlawful detainer assistant who enters into a contract or agreement with a client to provide services shall, prior to providing any services, provide the client with a written contract, the contents of which shall be prescribed by regulations adopted by the Department of Consumer Affairs.

(b) The written contract shall include all of the following provisions:

(1) The services to be performed.

(2) The costs of the services to be performed.

(3) There shall be printed on the face of the contract in 12-point boldface type a statement that the legal document assistant or unlawful detainer assistant is not an attorney and may not perform the legal services that an attorney performs.

(4) The contract shall contain a statement in 12-point boldface type that the county clerk has not evaluated or approved the registrant's knowledge or experience, or the quality of the registrant's services.

(5) The contract shall contain a statement in 12-point boldface type that the consumer may obtain information regarding free or low-cost representation through a local bar association or legal aid foundation and that the consumer may contact local law enforcement, a district attorney, or a legal aid foundation if the consumer believes that he or she has been a victim of fraud, the unauthorized practice of law, or any other injury.

(6) The contract shall contain a statement in 12-point boldface type that a legal document assistant or unlawful detainer assistant is not permitted to engage in the practice of law, including providing any kind of advice, explanation, opinion, or recommendation to a consumer about possible legal rights, remedies, defenses, options, selection of forms, or strategies.

(c) The contract shall be written both in English and in any other language comprehended by the client and principally used in any oral sales presentation or negotiation leading to execution of the contract. The legal document assistant or the unlawful detainer assistant is responsible for translating the contract into the language principally used in any oral sales presentation or negotiation leading to the execution of the contract.

(d) Failure of a legal document assistant or unlawful detainer assistant to comply with subdivisions (a), (b), and (c) shall make the contract or agreement for services voidable at the option of the client. Upon the voiding of the contract, the legal document assistant or unlawful detainer assistant shall immediately return in full any fees paid by the client.

(e) In addition to any other right to rescind, the client shall have the right to rescind the contract within 24 hours of the signing of the contract. The client may cancel the contract by giving the legal document assistant or the unlawful detainer assistant any written statement to the effect that the contract is canceled. If the client gives notice of cancellation by mail addressed to the legal document assistant or unlawful detainer assistant, with first-class postage prepaid, cancellation is effective upon the date indicated on the postmark. Upon the voiding or rescinding of the contract or agreement for services, the legal document assistant or unlawful detainer assistant shall immediately return to the client any fees paid by the client, except fees for services that were actually, necessarily, and reasonably performed on the client's behalf by the legal document assistant or unlawful detainer assistant with the client's knowing and express written consent. The requirements of this subdivision shall be conspicuously set forth in the written contract.

6410.5. (a) It is unlawful for any legal document assistant or unlawful detainer assistant, in the first in-person or telephonic solicitation of a prospective client of legal document or unlawful detainer assistant services, to enter into a contract or agreement for services or accept any compensation unless the legal document assistant or the unlawful detainer assistant states orally, clearly, affirmatively and expressly all of the following, before making any other statement, except statements required by law in telephonic or home solicitations, and a greeting, or asking the prospective client any questions:

(1) The identity of the person making the solicitation.

(2) The trade name of the person represented by the person making the solicitation, if any.

(3) The kind of services being offered for sale.

(4) The statement: ''I am not an attorney'' and, if the person offering legal document assistant or unlawful detainer assistant services is a partnership or a corporation, or uses a fictitious business name, ''[name] is not a law firm. I/we cannot represent you in court, advise you about your legal rights or the law, or select legal forms for you.''

(b) If the first contact between a legal document assistant or an unlawful detainer assistant and a prospective client is initiated by the prospective client, it is unlawful for the legal document assistant or unlawful detainer assistant to enter into a contract or agreement for services or accept any compensation unless the legal document assistant or the unlawful detainer assistant states orally, clearly, affirmatively and expressly, during that first contact, and before offering any contract or agreement for services to the prospective client, the following: ''I am not an attorney [and, if the person offering legal document assistant or unlawful detainer assistant services is a partnership or a corporation, or uses a fictitious business name, ''[name] is not a law firm.''] [I/We] cannot (1) represent you in court, (2) advise you about your legal rights or the law, or (3) select legal forms for you.'' After making this statement, and before offering the prospective client a contract or agreement for services, a legal document assistant or unlawful detainer assistant who has made the statement in accordance with this subsection may ask the prospective client to read the ''Notice to Consumer'' set forth below, and after allowing the prospective client time to read the notice, may ask the prospective client to sign and date the notice. The notice shall be set forth in black, bold, 14-point type on a separate, white, $8\frac{1}{2}$ by 11 inch sheet of paper which contains no other print or graphics, and shall be in the following form. The notice shall contain only the appropriate name or other designation from those indicated in brackets below. At the time a prospective client signs the notice and before that prospective client is offered any contract or agreement for signature, the legal document assistant or unlawful detainer assistant shall give the prospective client a clearly legible copy of the signed notice. A legal document assistant or unlawful detainer assistant shall not ask or require a prospective client or a client to sign any other form of acknowledgment regarding this notice.

NOTICE TO CONSUMER

DO NOT SIGN ANYTHING BEFORE YOU READ THIS PAGE

In the first conversation when you contacted [the unlawful detainer assistant or the legal document assistant], did [he or she] explain . . . . . .

[Name of unlawful detainer assistant or legal document assistant] is not an attorney.

[Name of corporation or partnership, if any, that is offering legal document assistant services or unlawful detainer assistant services] is not a law firm.

[He/she/name of the business] cannot represent you in court.

[He/she/name of the business] cannot advise you about your legal rights or the law.

[He/she/name of the business] cannot select legal forms for you.

Choose one:

Yes, [he/she] explained.

No, [he/she] did not explain.

Date:

Signature:

6411. It is unlawful for any person engaged in the business or acting in the capacity of a legal document assistant or unlawful detainer assistant to do any of the following:

(a) Make false or misleading statements to the consumer concerning the subject matter, legal issues, or self-help service being provided by the legal document assistant or unlawful detainer assistant.

(b) Make any guarantee or promise to a client or prospective client, unless the guarantee or promise is in writing and the legal document assistant or unlawful detainer assistant has a reasonable factual basis for making the guarantee or promise.

(c) Make any statement that the legal document assistant or unlawful detainer assistant can or will obtain favors or has special influence with a court, or a state or federal agency.

(d) Provide assistance or advice which constitutes the unlawful practice of law pursuant to Section 6125, 6126, or 6127.

(e) Engage in the unauthorized practice of law, including, but not limited to, giving any kind of advice, explanation, opinion, or recommendation to a consumer about possible legal rights, remedies, defenses, options, selection of forms, or strategies. A legal document assistant shall complete documents only in the manner prescribed by subdivision (d) of Section 6400.

(f) Use in the person's business name or advertising the words "legal aid," "legal services," or any similar term that has the capacity, tendency, or likelihood to mislead members of the public about that person's status as a nonprofit corporation or governmentally supported organization offering legal services without charge to indigent people, or employing members of the State Bar to provide those services.

6412. (a) Any owner or manager of residential or commercial rental property, tenant, or other person who is awarded damages in any action or proceeding for injuries caused by the acts of a registrant while in the performance of his or her duties as a legal document assistant or unlawful detainer assistant may recover damages from the bond or cash deposit required by Section 6405.

(b) If there has been a recovery against a bond or cash deposit under subdivision (a) and the registration has not been revoked pursuant to Section 6413, the registrant shall file a new bond or deposit an additional amount of cash within 30 days to reinstate the bond or cash deposit to the amount required by Section 6405. If the registrant does not file a bond, or deposit this amount within 30 days, his or her certificate of registration shall be revoked.

6412.1. (a) Any person injured by the unlawful act of a legal document assistant or unlawful detainer assistant shall retain all rights and remedies cognizable under law. The penalties, relief, and remedies

provided in this chapter are not exclusive, and do not affect any other penalties, relief, and remedies provided by law.

(b) Any person injured by a violation of this chapter by a legal document assistant or unlawful detainer assistant may file a complaint and seek redress in any superior court for injunctive relief, restitution, and damages. Attorney's fees shall be awarded to the prevailing plaintiff. A claim under this chapter may be maintained in small claims court, if the claim and relief sought are within the small claims court's jurisdiction.

6412.5. A legal document assistant or an unlawful detainer assistant may neither seek nor obtain a client's waiver of any of the provisions of this chapter. Any waiver of the provisions of this chapter is contrary to public policy, and is void and unenforceable.

6413. The county clerk shall revoke the registration of a legal document assistant or unlawful detainer assistant upon receipt of an official document or record stating that the registrant has been found guilty of the unauthorized practice of law pursuant to Section 6125, 6126, or 6127, has been found guilty of a misdemeanor violation of this chapter, has been found liable under Section 6126.5, or that a civil judgment has been entered against the registrant in an action arising out of the registrant's negligent, reckless, or willful failure to properly perform his or her obligation as a legal document assistant or unlawful detainer assistant. The county clerk shall be given notice of the disposition in any court action by the city attorney, district attorney, or plaintiff, as applicable. A registrant whose registration is revoked pursuant to this section may reapply for registration three years after the revocation.

6414. A registrant whose certificate is revoked shall be entitled to challenge the decision in a court of competent jurisdiction.

6415. A failure, by a person who engages in acts of a legal document assistant or unlawful detainer assistant, to comply with any of the requirements of Section 6401.6, 6402, 6408, or 6410, subdivision (a), (b), or (c) of Section 6411, or Section 6412.5 is a misdemeanor punishable by a fine of not less than one thousand dollars ($1,000) or more than two thousand dollars ($2,000), as to each client with respect to whom a violation occurs, or imprisonment for not more than one year, or by both that fine and imprisonment. Payment of restitution to a client shall take precedence over payment of a fine.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or

changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

CHAPTER 1019

An act to amend Section 13385 of, and to add Section 13286.9 to, the Water Code, relating to water, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 28, 2002. Filed with Secretary of State September 28, 2002.]

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

SECTION 1. Section 13286.9 is added to the Water Code, to read:

13286.9. On and after the date determined by the Santa Ana Regional Water Quality Control Board, or January 1, 2013, whichever is earlier, all wastewater discharged by the Orange County Sanitation District into the Pacific Ocean shall be subject to at least secondary treatment requirements pursuant to subparagraph (B) of paragraph (1) of subsection (b) of Section 301 of the Clean Water Act (33 U.S.C. Sec. 1311(b)(1)(B)), and any more stringent requirements determined to be appropriate by the state board or that regional board.

SEC. 2. 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 towards 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 or Section 13308, 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.

(iv) The discharger is a publicly owned treatment works located in Orange County that is unable to meet effluent limitations for biological oxygen demand, suspended solids, or both, because the publicly owned treatment works meets all of the following criteria:

(I) Was previously operating under modified secondary treatment requirements pursuant to Section 301(h) of the Clean Water Act (33 U.S.C. Sec. 1311(h)).

(II) Did vote on July 17, 2002, to not apply for a renewal of the modified secondary treatment requirements.

(III) Is in the process of upgrading its treatment facilities to meet the secondary treatment standards required by Section 301(b)(1)(B) of the Clean Water Act (33 U.S.C. Sec. 1311(b)(1)(B)).

(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, except that the time schedule may not exceed 10 years in length for the upgrade described in subparagraph (B)(iv)(III). 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 publicly owned treatment works (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 towards 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. 3. 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) (1) Except as provided in paragraph (2), for the 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.

(2) (A) For the purposes of subdivisions (h) and (i), a single operational upset in a wastewater treatment unit that treats wastewater using a biological treatment process shall be treated as a single violation, even if the operational upset results in violations of more than one effluent limitation and the violations continue for a period of more than one day, if all of the following apply:

(i) The discharger demonstrates all of the following:

(I) The upset was not caused by wastewater treatment operator error and was not due to discharger negligence.

(II) But for the operational upset of the biological treatment process, the violations would not have occurred nor would they have continued for more than one day.

(III) The discharger carried out all reasonable and immediately feasible actions to reduce noncompliance with the applicable effluent limitations.

(ii) The discharger is implementing an approved pretreatment program, if so required by federal or state law.

(B) Subparagraph (A) only applies to violations that occur during a period for which the regional board has determined that violations are unavoidable, but in no case may that period exceed 30 days.

(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), (k), and (*l*), a mandatory minimum penalty of three thousand dollars ($3,000) shall be assessed for each serious violation.

(2) For the purposes of this section, a ''serious violation'' means any waste discharge that violates 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.

(i) (1) Notwithstanding any other provision of this division, and except as provided in subdivisions (j), (k), and (*l*), 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:

(A) Violates a waste discharge requirement effluent limitation.

(B) Fails to file a report pursuant to Section 13260.

(C) Files an incomplete report pursuant to Section 13260.

(D) Violates 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.

(2) For the purposes of this section, a ''period of six consecutive months'' means the period commencing on the date that one of the violations described in this subdivision occurs and ending 180 days after that date.

(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) (i) The operation of a new or reconstructed wastewater treatment unit during a defined period of adjusting or testing, not to exceed 90 days for a wastewater treatment unit that relies on a biological treatment process and not to exceed 30 days for any other wastewater treatment unit, if all of the following requirements are met:

(I) The discharger has submitted to the regional board, at least 30 days in advance of the operation, an operations plan that describes the actions the discharger will take during the period of adjusting and testing, including steps to prevent violations and identifies the shortest reasonable time required for the period of adjusting and testing, not to exceed 90 days for a wastewater treatment unit that relies on a biological treatment process and not to exceed 30 days for any other wastewater treatment unit.

(II) The regional board has not objected in writing to the operations plan.

(III) The discharger demonstrates that the violations resulted from the operation of the new or reconstructed wastewater treatment unit and that the violations could not have reasonably been avoided.

(IV) The discharger demonstrates compliance with the operations plan.

(V) In the case of a reconstructed wastewater treatment unit, the unit relies on a biological treatment process that is required to be out of operation for at least 14 days in order to perform the reconstruction, or the unit is required to be out of operation for at least 14 days and, at the time of the reconstruction, the cost of reconstructing the unit exceeds 50 percent of the cost of replacing the wastewater treatment unit.

(ii) For the purposes of this section, ''wastewater treatment unit'' means a component of a wastewater treatment plant that performs a designated treatment function.

(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 towards 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 or Section 13308, 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.

(iv) The discharger is a publicly owned treatment works located in Orange County that is unable to meet effluent limitations for biological oxygen demand, suspended solids, or both, because the publicly owned treatment works meets all of the following criteria:

(I) Was previously operating under modified secondary treatment requirements pursuant to Section 301(h) of the Clean Water Act (33 U.S.C. Sec. 1311(h)).

(II) Did vote on July 17, 2002, not to apply for a renewal of the modified secondary treatment requirements.

(III) Is in the process of upgrading its treatment facilities to meet the secondary treatment standards required by Section 301(b)(1)(B) of the Clean Water Act (33 U.S.C. Sec. 1311(b)(1)(B)).

(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, except that the time schedule may not exceed 10 years in length for the upgrade described in subparagraph (B)(iv)(III). 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 towards 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*) (1) In lieu of assessing penalties pursuant to subdivision (h) or (i), the state board or regional board, with the concurrence of the discharger, may direct a portion of the penalty amount to be expended on a supplemental environmental project in accordance with the enforcement policy of the state board. If the penalty amount exceeds fifteen thousand dollars ($15,000), the portion of the penalty amount that may be directed to be expended on a supplemental environmental project may not exceed fifteen thousand dollars ($15,000) plus 50 percent of the penalty amount that exceeds fifteen thousand dollars ($15,000).

(2) For the purposes of this section, a ''supplemental environmental project'' means an environmentally beneficial project that a person agrees to undertake, with the approval of the regional board, that would not be undertaken in the absence of an enforcement action under this section.

(3) This subdivision applies to the imposition of penalties pursuant to subdivision (h) or (i) on or after January 1, 2003, without regard to the date on which the violation occurs.

(m) 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.

(n) Funds collected pursuant to this section shall be deposited in the State Water Pollution Cleanup and Abatement Account.

(o) (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.

(p) The amendments made to subdivisions (f), (h), (i) and (j) during the second year of the 2001–02 Regular Session apply only to violations that occur on or after January 1, 2003.

SEC. 4. The Legislature finds and declares that Section 1 of this act, which is applicable only to the Orange County Sanitation District, is necessary because of the unique and special pollution problems associated with the discharge of wastewater by the Orange County Sanitation District. It is, therefore, hereby declared that a general law within the meaning of Section 16 of Article IV of the California Constitution cannot be made applicable to the district and the enactment of this special law is necessary to protect the quality of affected water for the public good.

SEC. 5. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act, within the meaning of Section 17556 of the Government Code.

SEC. 6. Section 3 of this bill incorporates amendments to Section 13385 of the Water Code proposed by both this bill and AB 2351. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2003, but this bill becomes operative first, (2) each bill amends Section 13385 of the Water Code, and (3) this bill is enacted after AB 2351, in which case Section 13385 of the Water Code, as amended by Section 2 of this bill, shall remain operative only until the operative date of AB 2351, at which time Section 3 of this bill shall become operative.

SEC. 7. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to enable Orange County to be in compliance with state and federal laws relating to water quality, it is necessary that this act take effect immediately.

CHAPTER 1020

An act to add Sections 33009.5 and 52055.52 to, and to add Article 4.1 (commencing with Section 52058.1) and Article 4.2 (commencing with Section 52059) to Chapter 6.1 of Part 28 of, the Education Code,

relating to public education, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 28, 2002. Filed with Secretary of State September 28, 2002.]

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

SECTION 1. Section 33009.5 is added to the Education Code, to read:

33009.5. Notwithstanding subdivision (b) of Section 11125 of the Government Code, when the board provides information on its Internet site, that is available to subscribers to the extent permitted by law, concerning an agenda item, it shall provide the same information that is otherwise provided to board members. Nothing in this section is intended to require the board to provide any additional printed or electronic information beyond that which it would otherwise make available to the public at the open session.

SEC. 2. Section 52055.52 is added to the Education Code, to read:

52055.52. Thirty-six months after the Superintendent of Public Instruction undertakes any of the actions in paragraph (2) of subdivision (b) of Section 52055.5, as amended by Senate Bill 1310 of the 2001–02 Regular Session, and subsequently, or requires a school to contract with a school assistance and intervention team pursuant to Section 52055.51, the school shall no longer be eligible to receive funding for purposes of this article.

SEC. 3. Article 4.1 (commencing with Section 52058.1) is added to Chapter 6.1 of Part 28 of the Education Code, to read:

Article 4.1. No Child Left Behind Liaison Team

52058.1. (a) The No Child Left Behind Liaison Team is hereby established to advise the Superintendent of Public Instruction and the State Board of Education on all appropriate matters related to the implementation of the federal No Child Left Behind Act of 2001 (20 U.S.C. Sec. 6301 et seq.). The liaison team shall make recommendations to the Superintendent of Public Instruction and to the State Board of Education that are consistent with the federal No Child Left Behind Act of 2001 (20 U.S.C. Sec. 6301 et seq.) and its implementing regulations and that ensure the timely compliance by all schools within California that are subject to the requirements set forth in that act.

(b) The liaison team shall be composed of 15 members, as follows:

(1) One representative of the Legislative Analyst's office.

(2) Two members appointed by the Superintendent of Public Instruction.

(3) Two members appointed by the State Board of Education.
(4) Three members appointed by the Senate Committee on Rules.
(5) Three members appointed by the Speaker of the Assembly.
(6) The Chairperson of the Senate Committee on Education, or his or her designee.
(7) The Chairperson of the Assembly Committee on Education or his or her designee.
(8) The Vice Chairperson of the Senate Committee on Education or his or her designee.
(9) The Vice Chairperson of the Assembly Committee on Education or his or her designee.

(c) The members of the liaison team shall serve without compensation for a term not to exceed two years.

(d) The State Department of Education staff shall assist the State Board of Education and the liaison team.

(e) It is the intent of the Legislature that the members of the liaison team include members with practical experience and success working with low-performing schools including, but not limited to, experience working as teachers, administrators, classified personnel, or educational researchers.

(f) It is the intent of the Legislature that the liaison team have experience and knowledge working with California's diverse pupil population and urban and rural areas of the state and its members of the committee shall be selected from populations that reflect the diverse population of the state, to the extent possible.

SEC. 4. Article 4.2 (commencing with Section 52059) is added to Chapter 6.1 of Part 28 of the Education Code, to read:

Article 4.2. Statewide System of School Support

52059. (a) For purposes of complying with the federal No Child Left Behind Act of 2001 (20 U.S.C. Sec. 6301 et seq.) a Statewide System of School Support shall be established by the State Department of Education to provide a statewide system of intensive and sustained support and technical assistance for school districts, county offices of education, and schools in need of improvement. The system shall consist of regional consortia, which may include county offices of education and school districts, that work collaboratively with school districts and county offices of education to meet the needs of school districts and schools in need of improvement.

(b) The system shall provide assistance to school districts and schools in need of improvement by reviewing and analyzing all facets of a school's operation, including the design and operation of the instructional program offered by the school, and by assisting the school

in developing recommendations for improving pupil performance and school operations.

(c) In carrying out this article, the State Department of Education shall ensure that support is provided in the following order of priority:

(1) To school districts or county offices of education with schools that are subject to corrective action under paragraph (7) of subsection (b) of Section 6316 of Title 20 of the United States Code.

(2) To school districts or county offices of education with schools that are identified as being in need of improvement pursuant to subsection (b) of Section 6316 of Title 20 of the United States Code.

(3) To provide support and assistance to school districts and county offices of education with schools participating under the No Child Left Behind Act of 2001 (20 U.S.C. Sec. 6301 et seq.) that need support and assistance to achieve the purposes of that act.

(4) To provide support and assistance to other school districts and county offices of education with schools participating in a program carried out under this chapter.

(d) For purposes of this article, all references to schools shall include charter schools.

(e) Funds shall be distributed under this article based on the number of schools and enrollment of those schools in each region that have been identified as being in need of improvement pursuant to Section 6316 of Title 20 of the United States Code, or are participating in the programs conducted under this chapter.

SEC. 5. (a) The funds appropriated by Schedule 4 of Item 6110-123-0001 of Section 2.00 of the Budget Act of 2002 for purposes of corrective actions undertaken at schools in need of improvement, and the amount of twenty-nine million eighty-six thousand dollars ($29,086,000), from the funds appropriated by Schedule 1 of Item 6110-136-0890 of Section 2.00 of the Budget Act of 2002 for purposes of Title I of the Elementary and Secondary Education Act of 1965 (20 U.S.C. Sec. 6301 et seq.), shall be allocated by the State Department of Education, to school districts and county offices of education for expenditure during the 2002–03 fiscal year, as follows:

(1) The amount of one hundred fifty dollars ($150) per pupil for each pupil in a school that is required to enter into a contract with a school assistance and intervention team pursuant to subdivision (a) of Section 52055.51 of the Education Code, for purposes of implementing any recommendations made by the school assistance and intervention team in the report prepared by the team pursuant to subdivision (d) of Section 52055.51 of the Education Code. School districts that receive funds under this paragraph shall provide an in-kind match of services, or a match of school district funds in an amount equal to the amount received by the local education agency pursuant to this paragraph.

(2) (A) The amount of one hundred fifty dollars ($150) per pupil for each pupil in a school that is managed in accordance with of paragraph (3) of subdivision (b) of Section 52055.5 of the Education Code, for purposes of improving the academic performance of that school. School districts that receive funds under this paragraph shall provide an in-kind match of services, or a match of school district funds in an amount equal to the amount received by the local education agency pursuant to this paragraph.

(B) The Department of Finance and the State Department of Education shall provide funding for the support of each entity that is assigned to manage a school pursuant to paragraph (3) of subdivision (b) of Section 52055.5 of the Education Code.

(3) Funding for the support of each school assistance and intervention team that enters into a contract with a school district pursuant to subdivision (a) of Section 52055.51 of the Education Code shall be allocated as follows:

(A) Seventy-five thousand dollars ($75,000) for each school assistance and intervention team assigned to an elementary or middle school.

(B) One hundred thousand dollars ($100,000) for each school assistance and intervention team assigned to a high school.

(C) If a school district determines that it needs more than the amounts specified in subparagraphs (A) or (B), the school district may apply to the State Department of Education for additional funding. The application shall include justification for the requested increase. The State Department of Education and the Department of Finance shall review any applications and may provide funding up to a total funding level of one hundred twenty-five thousand dollars ($125,000), including the amount provided pursuant to subparagraph (A) or (B).

(D) As a condition of receipt of funds, a school district shall provide an in-kind match of services, or a match of school district funds, in an amount equal to one dollar ($1) for every two dollars ($2) provided pursuant to subparagraphs (A), (B), or (C).

(4) The amount of seven million five hundred thousand dollars ($7,500,000) shall be available for use by the State Department of Education for the purposes of the Statewide System of School Support established by Article 4.2 (commencing with Section 52059) of Chapter 6.1 of Part 28 of the Education Code.

(5) The State Department of Education shall provide seventy-five thousand dollars ($75,000) to each regional consortium that has at least one school that has been identified as being in need of corrective action pursuant to subsection (b) of Section 6316 of Title 20 of the United States Code. These funds shall be used to establish a team to assist these schools improve pupil performance. Team members shall 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 shall have proven successful expertise specific to the challenges inherent in improving the performance of schools. A consortium with many schools identified as being in need of corrective action may apply to the State Department of Education for additional funding for the establishment of a team. The State Department of Education and the Department of Finance shall review any applications for additional funding and may provide up to an additional fifty thousand dollars ($50,000) to a consortium that justifies the need.

(b) Of the funds appropriated in Schedule 1 of Item 6110-123-0890 of Section 2.00 of the Budget Act of 2002, up to one million five hundred thousand dollars ($1,500,000) shall be transferred to Item 6110-001-0890 of Section 2.00 of the Budget Act of 2002 for state operations costs related to this measure, based on the expenditure plan jointly developed by the Department of Finance and the State Department of Education.

(c) Funding for the purposes described in this section shall only be provided for three years.

(d) The Department of Finance and the Superintendent of Public Instruction shall review and recommend any changes to the funding allocated pursuant to subdivision (a) to the Governor and the Legislature by no later than April 15, 2004.

(e) The State Board of Education and the Superintendent of Public Instruction shall notify the chairs of the fiscal and policy committees that consider education and appropriations in each house of the Legislature of any plan for the expenditure of funds pursuant to subdivision (a), within 30 days of adopting the plan.

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:

To utilize available funding for purposes of improving the performance of the state's public schools, it is necessary that this act take effect immediately as an urgency statute.

CHAPTER 1021

An act to add Section 12201.05 to the Welfare and Institutions Code, relating to human services.

[Approved by Governor September 28, 2002. Filed with Secretary of State September 28, 2002.]

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

SECTION 1. Section 12201.05 is added to the Welfare and Institutions Code, to read:

12201.05. (a) Commencing with the 2004 calendar year, and thereafter, in any calendar year in which no cost-of-living adjustment is made pursuant to Section 12201, the payment schedules set forth in Sections 12200, 13920, and 13921, as adjusted pursuant to Section 12201, shall include the pass-along of any cost-of-living increases in federal benefits under Subchapter 16 (commencing with Section 1381) of Chapter 7 of Title 42 of the United States Code.

(b) Notwithstanding paragraph (2) of subdivision (d) of Section 12201, any adjustments made pursuant to this section to reflect the pass-along of federal cost-of-living adjustments shall be included in the base amounts for purposes of determining cost-of-living adjustments made pursuant to Section 12201.

CHAPTER 1022

An act to amend Section 17706 of the Family Code, to amend Section 12759 of the Government Code, to amend Sections 1596.76, 1597.09, 1597.091, 11970, 11970.2, and 130060 of, to add Article 5 (commencing with Section 11970.45) to, and to repeal Article 3 (commencing with Section 11970) of, Chapter 2 of Part 3 of Division 10.5 of, the Health and Safety Code, to amend Sections 1222, 1265.1, 1611.5, 9604, 9608, 9615, and 10521 of, to add Section 1253.9 to, to repeal Sections 9603 and 9611 of, and to repeal Article 3 (commencing with Section 9700) of Chapter 2 of Part 1 of Division 3 of, the Unemployment Insurance Code, to amend Sections 903.7, 10980, 11006.2, 11020, 11254, 11257, 11325.7, 11450, 11450.5, 11450.12, 11450.13, 11451.5, 11453, 11462, 11466.21, 11486, 12201, 14021.6, 14124.93, 15204.3, 15763, 16011, 16131, 19355.5, 19356, 19356.5, and 19356.6 of, to add Sections 10823.1, 11004.1, 11265.3, and 11323.3 to, to repeal Sections 11450.2 and 19356.65 of, and to repeal and add Sections 11265.1, 11265.2, and 18910 of, the Welfare and Institutions

Code, and to add Provision 17 to Item 5180-101-0001 of Section 2.00 of the Budget Act of 2001 (Chapter 106 of the Statutes of 2001), to add Provision 17 to Item 5180-101-0001 of Section 2.00 of the Budget Act of 1999 (Chapter 50 of the Statutes of 1999), and to add Provision 15 to Item 5180-101-0001 of Section 2.00 of the Budget Act of 1998 (Chapter 324 of the Statutes of 1998), relating to human services, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 28, 2002. Filed with Secretary of State September 28, 2002.]

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

SECTION 1. Section 17706 of the Family Code is amended to read:

17706. (a) It is the intent of the Legislature to encourage counties to elevate the visibility and significance of the child support enforcement program in the county. To advance this goal, effective July 1, 2000, the counties with the 10 best performance standards pursuant to clause (ii) of subparagraph (B) of paragraph (2) of subdivision (b) of Section 17704 shall receive an additional 5 percent of the state's share of those counties' collections that are used to reduce or repay aid that is paid pursuant to Article 6 (commencing with Section 11450) of Chapter 2 of Part 3 of Division 9 of the Welfare and Institutions Code. The counties shall use the increased recoupment for child support-related activities that may not be eligible for federal child support funding under Part D of Title IV of the Social Security Act, including, but not limited to, providing services to parents to help them better support their children financially, medically, and emotionally.

(b) The operation of subdivision (a) shall be suspended for the 2002–03 fiscal year.

SEC. 2. Section 12759 of the Government Code is amended to read:

12759. (a) The director shall reserve an amount of funds that bears the same relationship to the total funds available for community action programs as the number of persons living in households at or below the poverty level in uncapped areas of the state bears to the total number of those persons living in the state, as reported in the most recent available census.

(b) (1) Each community action agency that qualified or could have qualified for the minimum funding guideline under former Community Services Administration policies shall receive a minimum level of funding to ensure that it will be capable of operating a community action program.

(2) Beginning with the 2003 federal Community Services Block Grant award to California, the minimum level of funding required by

paragraph (1) shall equal fifty-five hundredths of 1 percent of the state community action agency network allocation.

(3) Beginning with the 2004 federal Community Services Block Grant award to California, the minimum level of funding required by paragraph (1) shall equal six-tenths of 1 percent of the state community action agency network allocation.

(c) The levels of minimum funding in subdivision (b) shall be funded from increases in federal Community Services Block Grant funds or, at the discretion of the director, from Community Services Block Grant discretionary funds. If these sources are not sufficient to achieve the increases required under subdivision (b), the phase-in of new levels shall continue until the levels required under subdivision (b) are reached. No community action agency shall have its allocation reduced below the level allocated to it from the 2002 federal Community Services Block Grant award to California in order to establish the levels of minimum funding in subdivision (b).

(d) Before January 1, 2005, the state community action agency network shall review and analyze the minimum funding issue with the objective of proposing an equitable methodology for making appropriate adjustments in the future.

(e) The director shall assure that financial assistance to community action programs is distributed on an equitable basis. In each program year, the director shall proportionately adjust the funding guidelines so as to achieve equity in funding allocations. Equity shall be determined on the basis of a comparison of the number of persons living in households that have an income at or below the poverty level in each political subdivision served by a community action agency, relative to the total number of low-income persons residing in capped areas of the state, as reported in the most recent available census.

(f) If the total level of federal Community Services Block Grant funds is reduced more than 3.5 percent below the amount appropriated in the annual Budget Act, subdivision (e) shall not be operative, and all agencies shall be reduced by an equal percentage, which shall be that percentage in excess of 3.5 percent.

(g) It is the intent of the Legislature that the allocation formula specified in this section shall not be used as a template for other funding distributions.

(h) Notwithstanding subdivision (b), for the 2002–03 fiscal year, all eligible entities currently in good standing in the California Community Services Grant Program shall receive an increase in funding for the 2002 program year that is proportionate to the increase provided in the 2002 federal Community Services Block Grant to the state.

SEC. 3. Section 1596.76 of the Health and Safety Code is amended to read:

1596.76. ''Day care center'' means any child day care facility other than a family day care home, and includes infant centers, preschools, extended day care facilities, and schoolage child care centers.

SEC. 4. Section 1597.09 of the Health and Safety Code is amended to read:

1597.09. (a) Except as provided by subdivision (b), a site visitation to all licensed day care centers shall be made annually and as often as necessary to ensure compliance.

(b) A site visitation to schoolage child day care centers shall be made triennially, and as often as necessary to ensure compliance.

SEC. 5. Section 1597.091 of the Health and Safety Code is amended to read:

1597.091. (a) In addition to the visits required by Section 1597.09, the department shall annually make unannounced spot visits to 20 percent of all child day care centers licensed under this chapter, except schoolage child day care centers. The unannounced visits may be made at any time during the facility's business hours. At no time shall other site visit requirements described by this section prevent a timely site visit response to a complaint as required by Section 1596.853.

(b) The department shall implement this section only to the extent funds are available in accordance with Section 18285.5 of the Welfare and Institutions Code.

SEC. 6. Section 11970 of the Health and Safety Code is amended to read:

11970. (a) This article shall be known and may be cited as the Drug Court Partnership Act of 1998.

(b) The Drug Court Partnership shall be administered by the State Department of Alcohol and Drug Programs for the purpose of demonstrating the cost-effectiveness of drug courts operating pursuant to Sections 1000 to 1000.4, inclusive, of the Penal Code, and for any defendant who has entered a plea of guilty and is on active probation. The department shall design and implement the program with the concurrence of the Judicial Council.

(1) This program shall award grants on a competitive basis for four years to counties that develop and implement drug court programs operating pursuant to Sections 1000 to 1000.4, inclusive, of the Penal Code, and for any defendant who has entered a plea of guilty and is on active probation which are likely to provide the greatest public safety benefit and be most effective in reducing state and local costs.

(2) To be eligible for this grant, the county alcohol and drug program administrator and the presiding judge shall submit a multiagency plan that identifies the resources and strategies for providing an effective drug court program. The department, in collaboration with the Judicial Council, shall establish minimum criteria for evaluating the plans.

(c) The plan shall include, but not be limited to, the following components:

(1) Development of information-sharing systems to ensure that county actions are fully coordinated, and to provide data for measuring the success of the grantee in achieving its goals.

(2) Identification of outcome measures, which shall include, but not be limited to, the following:

(A) The annual number of misdemeanor and felony convictions of persons participating in the program for a minimum of two years after entry into the program.

(B) The annual number of admissions to county jail and state prison of persons participating in the program for a minimum of two years after entry into the program.

(C) Other outcome measures identified by the department and the Judicial Council that will assist in determining the cost-effectiveness of the program.

(d) For the purposes of this section, the grants that are initially awarded using funds appropriated in the Budget Act of 1998 shall be known as ''first-round grants'' and the grants initially awarded using funds appropriated in the Budget Act of 1999 shall be known as ''second-round grants.''

(e) The department, in collaboration with the Judicial Council, shall award both first-round and second-round grants that provide funding for four years, subject to appropriation in the Budget Act. Funding shall be used to supplement, rather than supplant, existing programs.

(1) Grant funds shall be used for programs that are identified in the local plan. Acceptable uses may include, but are not limited to, the following: drug court coordinators, training, drug testing, treatment, transportation, and other costs related to the implementation of the plan.

(2) No grant shall be awarded unless the applicant makes available resources in an amount equal to at least 10 percent of the amount of the grant in years one and two, and 20 percent of the amount of the grant in years three and four.

(f) The department, with concurrence from the Judicial Council, shall establish minimum standards for use of funds in drug courts operating pursuant to Sections 1000 to 1000.4, inclusive, of the Penal Code, and for any defendant who has entered a plea of guilty and is on active probation, funding schedules, and procedures for awarding grants, which shall take into consideration, but not be limited to, all of the following:

(1) The number of participants who will be served in the program.

(2) Demonstrated commitment to exceed the minimum match requirement, such as in-kind contributions from participating agencies.

(3) Demonstrated ability to provide treatment to clients who will be served through the program.

(4) Demonstrated capacity to administer the program.

(5) Demonstrated ability to report outcome measures for program participants and for participants in other comparable drug court programs administered in the county.

(6) Demonstrated commitment to the program of participating local agencies and the court.

(7) Demonstrated commitment by the drug court to meet the standard of judicial administration.

(g) The department, in collaboration with the Judicial Council, shall create an evaluation design for the Drug Court Partnership that will assess the effectiveness of the program. The department, together with the Judicial Council, shall develop an interim report to be submitted to the Legislature on or before March 1, 2000, and a final analysis of the grant program in a report to be submitted to the Legislature on or before March 1, 2002.

(h) 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. 6.5. Section 11970.2 of the Health and Safety Code is amended to read:

11970.2. (a) A county alcohol and drug program administrator and the presiding judge in the county shall develop and submit a comprehensive multiagency drug court plan for implementing cost-effective local drug court systems for adults, juveniles, and parents of children who are detained by, or are dependents of, the juvenile court to be eligible for funding under this chapter. The plan shall do all of the following:

(1) Describe existing programs that serve substance abusing adults, juveniles, and parents of children who are detained by, or are dependents of, the juvenile court.

(2) Provide a local action plan for implementing cost-effective drug court systems, including any or all of the following drug court systems:

(A) Drug courts operating pursuant to Sections 1000 to 1000.5, inclusive, of the Penal Code.

(B) Drug courts for juvenile offenders.

(C) Drug courts for parents of children who are detained by, or are dependents of, the juvenile court.

(D) Drug courts for parents of children in family law cases involving custody and visitation issues.

(E) Other drug court systems that are approved by the Drug Court Partnership Executive Steering Committee.

(3) Develop information-sharing systems to ensure that county actions are fully coordinated, and to provide data for measuring the success of the local action plan in achieving its goals.

(4) Identify outcome measures that will determine the cost effectiveness of the local action plan.

(b) (1) The department, in collaboration with the Judicial Council, shall distribute funds to eligible counties using the two thousand five hundred dollars ($2,500) per million/remainder per capita methodology, subject to appropriation in the Budget Act. Funding shall be used to supplement, rather than supplant, existing programs. Funding for counties that opt not to participate in the program shall be distributed on a per capita basis to participating counties.

(2) Funds distributed to counties shall be used for programs that are identified in the local plan. Acceptable uses may include, but are not limited to, any of the following: drug court coordinators, case management, training, drug testing, treatment, transportation, and other costs related to the implementation of the plan.

(3) No funds shall be distributed unless the applicant makes available resources in an amount equal to at least 10 percent of the amount of the funds distributed in years one and two, and 20 percent of the amount of the funds distributed in years three, four, and five.

(c) The department, with concurrence from the Judicial Council, shall establish minimum standards, funding schedules, and procedures for funding programs.

(d) The department, in collaboration with the Judicial Council, shall create an evaluation design for the Comprehensive Drug Court Implementation Act of 1999, that will assess the effectiveness of the program. The department, together with the Judicial Council, shall develop an interim report to be submitted to the Legislature on or before March 1, 2004, and a final analysis of the program in a report to be submitted to the Legislature on or before March 1, 2005.

(e) It is the intent of the Legislature that an independent and objective evaluation of the model program in San Diego County known as the Substance Abuse Recovery Management System (SARMS) be conducted to determine the relative costs and fiscal benefits to the state and to the county of that program to reduce foster care costs through the provision of substance abuse treatment to parents with a need for that treatment who are involved in dependency court cases. It is also the intent of the Legislature that the State Department of Social Services, within its available resources and in collaboration with the Judicial Council, the Department of Alcohol and Drug Programs, and representatives from San Diego County, make all feasible efforts to initiate this evaluation of SARMS, including, but not limited to, an examination of the availability of funding or other resources from local

government agencies, private foundations, universities, and federal grants for purposes of the evaluation. The department shall provide an oral report to the Legislature at its budget hearings in 2003 on the status of these efforts.

SEC. 7. Article 5 (commencing with Section 11970.45) is added to Chapter 2 of Part 3 of Division 10.5 of the Health and Safety Code, to read:

Article 5. Drug Court Partnership Act of 2002

11970.45. (a) This article shall be known and may be cited as the Drug Court Partnership Act of 2002.

(b) (1) The Drug Court Partnership Program, as provided for in this article, shall be administered by the State Department of Alcohol and Drug Programs for the purpose of providing assistance to drug courts that accept only defendants who have been convicted of felonies and placed on formal probation, conditioned on their participation in the drug court program. The department and the Judicial Council shall design and implement this program through the Drug Court Systems Steering Committee as originally established by the department and the Judicial Council to implement the Drug Court Partnership Act of 1998 (Article 3 (commencing with Section 11970).

(2) This program shall award grants to grantees that received funding pursuant to the Drug Court Partnership Act of 1998 and successfully modify the existing multiagency plan to conform to this article. Grants shall be awarded in a manner that ensures that no grantee will receive funding in excess of prior annual grants under the Drug Court Partnership Act of 1998.

(3) Grants referred to in the Drug Court Partnership Act of 1998 as ''first-round'' grants may be funded under this article until April 30, 2003. These grants may be supplemented with funds appropriated for that purpose from the General Fund and extended to June 30, 2003. Any extensions of the grant budget periods beyond either of those dates, as applicable, shall conform to this article.

(4) Grants referred to in the Drug Court Partnership Act of 1998 as ''second-round'' grants may be funded under this article, effective July 1, 2002, in accordance with the existing multiagency plan. These grants may continue under their existing plan established under the Drug Court Partnership Act of 1998, until a revised plan is approved under this article.

(5) Grantees who do not seek to revise their existing plan or whose revised plan is not approved under this article prior to September 30, 2002, shall no longer be funded under this article, effective October 31, 2002. Funds returned from discontinued grants shall be redistributed to

the remaining grantees for the purpose of increasing the number of defendants participating in each drug court program.

(6) Commencing July 1, 2003, both ''first-round'' and ''second-round'' grants funded through this article will be funded pursuant to this article on an annual grant cycle of July 1 through June 30.

(7) (A) The department shall require grantees to submit a revised multiagency plan that is in conformance with the Drug Court Systems Steering Committee's recommended guidelines. Revised multiagency plans that are reviewed and approved by the department and recommended by the Drug Court Systems Steering Committee shall be funded for the 2002–03 fiscal year under this article. The department, without a renewal of the Drug Court Systems Steering Committee's original recommendation, may disburse future year appropriations to the grantees.

(B) The multiagency plan shall identify the resources and strategies for providing an effective drug court program exclusively for convicted felons who meet the requirements of this article and the guidelines adopted thereunder, and shall set forth the basis for determining eligibility for participation that will maximize savings to the state in avoided prison costs.

(C) The multiagency plan shall include, but not be limited to, all of the following components:

(i) The method by which the drug court will ensure that the target population of felons will be identified and referred to the drug court.

(ii) The elements of the treatment and supervision programs.

(iii) The method by which the grantee will provide the specific outcomes and data required by the department to determine state prison savings or cost avoidance.

(iv) Assurance that funding received pursuant to this article will be used to supplement, rather than supplant, existing programs.

(c) Grant funds shall be used only for programs that are identified in the approved multiagency plan. Acceptable uses may include, but shall not be limited to, any of the following:

(1) Drug court coordinators.

(2) Training.

(3) Drug Testing.

(4) Treatment.

(5) Transportation.

(6) Other costs related to substance abuse treatment.

(d) The department shall identify and design a data collection instrument to determine state prison cost savings and avoidance from this program.

(e) No grant shall be awarded unless the applicant makes available resources in an amount equal to at least 20 percent of the amount of the grant.

(f) Grant funds shall be transferred by the department on a reimbursement basis to grantees whose multiagency plans are approved. No reimbursement shall be made until and unless the drug court is in full and complete compliance with all the data reporting requirements of the department and the Judicial Council.

(g) If grant funds are withheld from grantees for failure to comply with the requirements of this article for a period of more than six months, the grantee's grant shall be terminated and the remaining funds of the terminated grant shall be redistributed to the remaining grantees, for the purpose of increasing the number of defendants participating in each drug court program.

(h) The department shall annually submit a report to the Legislature during budget hearings regarding the cost savings of the program in avoided state prison costs.

(i) It is the intent of the Legislature that this article be funded by an appropriation in the annual Budget Act.

(j) No more than 5 percent of the amount appropriated by the annual Budget Act shall be available to the department to administer the program established pursuant to this article.

SEC. 8. Section 130060 of the Health and Safety Code is amended to read:

130060. (a) (1) After January 1, 2008, any general acute care hospital building that is determined to be a potential risk of collapse or pose significant loss of life shall only be used for nonacute care hospital purposes. A delay in this deadline may be granted by the office upon a demonstration by the owner that compliance will result in a loss of health care capacity that may not be provided by other general acute care hospitals within a reasonable proximity. In its request for an extension of the deadline, a hospital shall state why the hospital is unable to comply with the January 1, 2008, deadline requirement.

(2) Prior to granting an extension of the January 1, 2008, deadline pursuant to this section, the office shall do all of the following:

(A) Provide public notice of a hospital's request for an extension of the deadline. The notice, at a minimum, shall be posted on the office's Internet Web site, and shall include the facility's name and identification number, the status of the request, and the beginning and ending dates of the comment period, and shall advise the public of the opportunity to submit public comments pursuant to subparagraph (C). The office shall also provide notice of all requests for the deadline extension directly to interested parties upon request of the interested parties.

(B) Provide copies of extension requests to interested parties within 10 working days to allow interested parties to review and provide comment within the 45-day comment period. The copies shall include those records that are available to the public pursuant to the Public Records Act, Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code.

(C) Allow the public to submit written comments on the extension proposal for a period of not less than 45 days from the date of the public notice.

(b) (1) It is the intent of the Legislature, in enacting this subdivision, to facilitate the process of having more hospital buildings in substantial compliance with this chapter and to take nonconforming general acute care hospital inpatient buildings out of service more quickly.

(2) The functional contiguous grouping of hospital buildings of a general acute care hospital, each of which provides, as the primary source, one or more of the hospital's eight basic services as specified in subdivision (a) of Section 1250, may receive a five-year extension of the January 1, 2008, deadline specified in subdivision (a) of this section pursuant to this subdivision for both structural and nonstructural requirements. A functional contiguous grouping refers to buildings containing one or more basic hospital services that are either attached or connected in a way that is acceptable to the State Department of Health Services. These buildings may be either on the existing site or a new site.

(3) To receive the five-year extension, a single building containing all of the basic services or at least one building within the contiguous grouping of hospital buildings shall have obtained a building permit prior to 1973 and this building shall be evaluated and classified as a nonconforming, Structural Performance Category 1 (SPC-1) building. The classification shall be submitted to and accepted by the Office of Statewide Health Planning and Development. The identified hospital building shall be exempt from the requirement in subdivision (a) until January 1, 2013, if the hospital agrees that the basic service or services that were provided in that building shall be provided, on or before January 1, 2013, as follows:

(A) Moved into an existing conforming Structural Performance Category-3 (SPC-3), Structural Performance Category-4 (SPC-4), or Structural Performance Category-5 (SPC-5) and Non-Structural Performance Category-4 (NPC-4) or Non-Structural Performance Category-5 (NPC-5) building.

(B) Relocated to a newly-built compliant SPC-5 and NPC-4 or NPC-5 building.

(C) Continued in the building if the building is retrofitted to a SPC-5 and NPC-4 or NPC-5 building.

(4) A five-year extension is also provided to a post 1973-building if the hospital owner informs the Office of Statewide Health Planning and Development that the building is classified as a SPC-1, SPC-3, or SPC-4 and will be closed to general acute care inpatient service use by January 1, 2013. The basic services in the building shall be relocated into a SPC-5 and NPC-4 or NPC-5 building by January 1, 2013.

(5) Any SPC-1 buildings, other than the building identified in paragraph (3) or (4), in the contiguous grouping of hospital buildings shall also be exempt from the requirement in subdivision (a) until January 1, 2013. However, on or before January 1, 2013, at a minimum, each of these buildings shall be retrofitted to a SPC-2 and NPC-3 building, or no longer be used for general acute care hospital inpatient services.

(c) On or before March 1, 2001, the office shall establish a schedule of interim work progress deadlines that hospitals shall be required to meet to be eligible for the extension specified in subdivision (b). To receive this extension, the hospital building or buildings shall meet the year 2002 nonstructural requirements.

(d) A hospital building that is eligible for an extension pursuant to this section shall meet the January 1, 2030, nonstructural and structural deadline requirements if the building is to be used for general acute care inpatient services after January 1, 2030.

(e) Upon compliance with this section, the hospital shall be issued a written notice of compliance by the office. The office shall send a written notice of violation to hospital owners that fail to comply with this section.

SEC. 9. Section 1222 of the Unemployment Insurance Code is amended to read:

1222. Within 30 days of service of any notice of assessment or denial of claim for refund or credit under Sections 803, 821, 844, or 991, or of any notice under Sections 704.1, 1035, 1055, 1127.5, 1131, 1142, 1143, 1144, 1180, 1184, 1733, and 1735, any employing unit or other person given the notice, or any employing unit affected by a granting or denial of a transfer of reserve account, may file a petition for review or reassessment with an administrative law judge. The administrative law judge may for good cause grant an additional 30 days for the filing of a petition. If a petition for reassessment is not filed within the 30-day period, or within the additional period granted by the administrative law judge, an assessment is final at the expiration of the period. If a petition for review of a termination of elective coverage under Section 704.1 is not filed within the 30-day period, or within the additional period granted by the administrative law judge, the termination is final at the expiration of the period. If the director fails to serve notice of his or her action within 60 days after a claim for refund or credit is filed, the person

or employing unit may consider the claim denied and file a petition with an administrative law judge.

SEC. 10. Section 1253.9 is added to the Unemployment Insurance Code, to read:

1253.9. An unemployed individual may not be disqualified for unemployment compensation benefits solely on the basis that he or she is a student. An unemployed individual may be considered to be able and available for work pursuant to subdivision (c) of Section 1253, if the school attendance does not eliminate a substantial portion of the individual's full-time labor market availability. If an unemployed individual restricts his or her availability to part-time work due to school attendance, he or she may be considered to be able to work and available for work if he or she meets the criteria set forth in Section 1253.8.

SEC. 11. Section 1265.1 of the Unemployment Insurance Code is amended to read:

1265.1. Notwithstanding any other provision of this division, payments to an individual by an employer who has failed to provide the advance notice of facility closure required by the federal Worker Adjustment and Retraining Notification Act (WARN) (29 U.S.C. Sec. 2101 and following) shall not be construed to be wages or compensation for personal services under this division, and benefits payable under this division shall not be denied or reduced because of the receipt of payments related in any way to an employer's violation of the WARN Act.

SEC. 13. Section 1611.5 of the Unemployment Insurance Code is amended to read:

1611.5. Notwithstanding Section 1611, the Legislature may appropriate from the Employment Training Fund thirty million dollars ($30,000,000), in the Budget Act of 2002 to fund the local assistance portion of welfare-to-work activities under the CalWORKs program, provided for pursuant to Article 3.2 (commencing with Section 11320) of Chapter 2 of Part 3 of Division 9 of the Welfare and Institutions Code, as administered by the State Department of Social Services.

SEC. 15. Section 9603 of the Unemployment Insurance Code is repealed.

SEC. 16. Section 9604 of the Unemployment Insurance Code is amended to read:

9604. (a) The department shall establish necessary data systems which shall provide administrative information on persons served including, but not limited to, the following information:

(1) Pertinent data on the characteristics of persons served.

(2) The services provided.

(3) The results of services provided.

(4) Progress report data for clients in the manpower training program, at intervals of at least 30, 90, and 180 days following completion of manpower training.

(b) The department shall also compile annually a report for the state and its principal labor market areas. The report shall contain information on the characteristics of the unemployed and analyses of current trends and projections for population, labor force, employment, and unemployment and shall be provided on a regular basis to cooperative area manpower systems councils or successors.

SEC. 17. Section 9608 of the Unemployment Insurance Code is amended to read:

9608. The director shall, within each community employment development center, establish an intake system to appraise the individual needs of applicants. Each community employment development center shall provide the following services:

(a) Job referral and labor market information services to applicants who are occupationally competitive and qualified by training or experience in the labor market. These applicants shall be encouraged to utilize self-help services.

(b) Employment exploration and job development services to applicants who are employable but need some directed assistance in planning an effective job search or coping with minor barriers to employment. Employment exploration and job development services are designed:

(1) To prepare groups of applicants to use job referral and information services by instructing them in job finding techniques and how to initiate their own job search.

(2) To assist applicants directly by developing job opportunities.

(3) To provide, as necessary, usually on a one-time basis, such services as the following:

(A) Contacting an employer to explain an applicant's qualifications or limitations, such as a handicap not affecting ability to work, in relation to requirements for a particular job and arranging an interview.

(B) A more thorough appraisal of the applicant's capabilities and desires in relation to the job market than is required of an applicant seeking only job referral and labor market information.

(4) To arrange for short-term supplemental services.

(c) Individual employability development and placement services to applicants who are potentially employable but are in need of more intensive services before becoming employable because they are vocationally handicapped due to disability, lack of skills, obsolescence of job skills, limited education, or poor work habits and attitudes. Intensive employability services shall be provided by case-responsible persons to applicants where case-responsible persons are assigned.

(d) Through counselors, case services to applicants to the extent funds are available. Case services funds may be made available for services to the disadvantaged. ''Case services'' means an applicant's expenses necessary for or incident to training or employability development and includes, but is not limited to, the following:

(1) Medical and dental treatment necessary for employability.
(2) Temporary child care.
(3) Transportation costs.
(4) Wearing apparel.
(5) Books and supplies.
(6) Tools and safety equipment.
(7) Union fees.
(8) Business license fees.

SEC. 18. Section 9611 of the Unemployment Insurance Code is repealed.

SEC. 18.5. Section 9615 of the Unemployment Insurance Code is amended to read:

9615. Eligible persons who are registrants pursuant to Article 3.2 (commencing with Section 11320) of Chapter 2 of Part 3 of Division 9 of the Welfare and Institutions Code shall receive priority for services provided by the Service Center programs provided for pursuant to this chapter and Executive Order 66-11, July 1966. The department shall use up to 50 percent of the funds available to it pursuant to Section 7(b) of the federal Wagner-Peyser Act (29 U.S.C., Sec. 49f) to provide for job services required pursuant to subdivision (c) of Section 11320.3 of the Welfare and Institutions Code.

SEC. 19. Article 3 (commencing with Section 9700) of Chapter 2 of Part 1 of Division 3 of the Unemployment Insurance Code is repealed.

SEC. 20. Section 10521 of the Unemployment Insurance Code is amended to read:

10521. As used in this chapter:

(a) ''State council'' means the State Job Training Coordinating Council established pursuant to Chapter 4.5 (commencing with Section 15035) of Division 8.

(b) ''Employment and training programs and services'' means all programs and services provided in this state to increase employment or provide job search assistance or training to unemployed or underemployed persons, including those administered by state and local education and training agencies (including vocational education agencies), public assistance agencies, the employment service, rehabilitation agencies, postsecondary institutions, economic development agencies, and other agencies which have a direct interest in employment and training and human resource utilization in the state. This shall include, but is not limited to, the following:

(1) Programs operated pursuant to the Job Training Partnership Act, as amended.

(2) Employment services, as authorized by the Wagner-Peyser Act.

(3) Employment services to food stamp recipients, as authorized by Public Law 95-113 and Section 18900 of the Welfare and Institutions Code.

(4) The Career Opportunities Development Program, as authorized by Division 4 (commencing with Section 12000).

(5) The California Jobs Tax Credit, as authorized by Sections 17053.7 and 24330 of the Revenue and Taxation Code.

(6) The State Service Center Program, as authorized by Executive Order 66-11, July 1966.

(7) Dislocated Workers Assistance, as authorized by Chapter 7.5 (commencing with Section 15075) of Division 8.

(8) Adult education, as authorized by Chapter 10 (commencing with Section 52500) of Part 28 of Division 4 of Title 2 of the Education Code.

(9) Vocational education programs subject to the reporting requirements of the federal Carl D. Perkins Vocational Education Act (20 U.S.C. Sec. 2301 et seq.), or authorized by Chapter 1 (commencing with Section 8000) of Part 6, and Chapter 9 (commencing with Section 52300) and Chapter 13 (commencing with 52950) of Part 28 of the Education Code.

(10) The California Educational Opportunity Grant Program, as authorized by subdivision (c) of Section 69532 of the Education Code.

(11) Vocational education for inmates of correctional institutions, as authorized by Article 6 (commencing with Section 1120) of Chapter 3 of Part 1 of Division 2 of the Welfare and Institutions Code, and by Sections 2054, 2716, and 5091 of the Penal Code.

(12) The California Conservation Corps, as authorized by Division 12 (commencing with Section 14000) of the Public Resources Code.

(13) Apprenticeship programs, as authorized by Chapter 4 (commencing with Section 3070) of Division 3 of the Labor Code.

(14) The Employment Training Panel, as authorized by Chapter 3.5 (commencing with Section 10200) of Part 1 of Division 3.

(15) Economic and business development programs and services, as authorized by Part 6.7 (commencing with Section 15310) of Division 3 of Title 2 of the Government Code.

(16) The Small Business Development Program, as authorized by Part 5 (commencing with Section 14000) of Division 3 of Title 1 of the Corporations Code.

(17) The business and industrial development programs, as authorized by Division 15 (commencing with Section 32000) of the Financial Code.

(18) The Industrial Development Financing Program, as authorized by Title 10 (commencing with Section 91500) of the Government Code.

(19) Child care services provided to permit parents to be employed or participate in training, as authorized by Chapter 2 (commencing with Section 8200) of Part 6 of Division 1 of Title 1 of the Education Code.

(20) Income maintenance programs for persons who would be employed but for a lack of employment opportunities, training, child care, or vocational rehabilitation, as authorized by Division 1 (commencing with Section 100), and Division 9 (commencing with Section 10000) of the Welfare and Institutions Code.

(21) The Greater Avenues for Independence Act, as authorized by Article 3.2 (commencing with Section 11320) of Chapter 2 of Part 3 of Division 9 of the Welfare and Institutions Code.

(22) Vocational rehabilitation programs, as authorized by Article 2.6 (commencing with Section 4635) of Chapter 2 of Part 2 of Division 4 of the Labor Code and Division 9 (commencing with Section 19000) of the Welfare and Institutions Code.

(23) Community Services Block Grants, as authorized by the Economic Opportunity Act (Public Law 97-35).

(24) Employment and training services for homeless persons, as authorized by the Stewart B. McKinney Act (Public Law 100-77).

(25) Senior Community Service Employment programs, as authorized by Title V of the Older Americans Act (Subchapter 7 (commencing with Section 3056) of Chapter 35 of Title 42 of the United States Code) and Section 9000 of the Welfare and Institutions Code.

(26) California Community College programs, as authorized by Division 7 (commencing with Section 70900) of Title 3 of the Education Code.

(27) The Enterprise Zone Act, as authorized by Chapter 12.8 (commencing with Section 7070), and the Employment and Economic Incentive Act, as authorized by Chapter 12.9 (commencing with Section 7080), of Division 7 of Title 1 of the Government Code.

(28) Programs for Disadvantaged Pupils, as authorized by Part 29 (commencing with Section 54000) of the Education Code.

SEC. 21. 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 the fund shall be used exclusively for the purposes set forth in this section.

(b) For each fiscal year beginning with the 1981–82 fiscal year, 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 net state share of foster care 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) of the net state share of foster care collections to the Treasurer for deposit in the Foster Children and Parent Training Fund, except that, commencing with the 2002–03 fiscal year, a total of not more than three million dollars ($3,000,000) may be transferred to the fund in any fiscal year.

(c) (1) 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.

(2) 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.

(3) 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.

(4) 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 the 1983–84 fiscal year, 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) (1) 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).

(2) 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. 23. Section 10823.1 is added to the Welfare and Institutions Code, to read:

10823.1. The California Health and Human Services Agency Data Center and the State Department of Social Services shall, in consultation with the Department of Finance, the Department of Information Technology, and the Interim Statewide Automated Welfare System (ISAWS) Consortium, develop a plan for the migration of the ISAWS Consortium counties to one or more statewide automated welfare system consortia. This plan shall be submitted to the chairs of the budget committees of each house of the Legislature and the Chair of the Joint Legislative Budget Committee by March 15, 2003.

SEC. 23.5. Section 10980 of the Welfare and Institutions Code is amended to read:

10980. (a) Any person who, willfully and knowingly, with the intent to deceive, makes a false statement or representation or knowingly fails to disclose a material fact in order to obtain aid under the provisions of this division or who, knowing he or she is not entitled thereto, attempts to obtain aid or to continue to receive aid to which he or she is not entitled, or to receive a larger amount than that to which he or she is legally entitled, is guilty of a misdemeanor, punishable by imprisonment in the county jail for a period of not more than six months, by a fine of not more than five hundred dollars ($500), or by both imprisonment and fine.

(b) Any person who knowingly makes more than one application for aid under the provisions of this division with the intent of establishing multiple entitlements for any person for the same period or who makes an application for that aid for a fictitious or nonexistent person or by

claiming a false identity for any person is guilty of a felony, punishable by imprisonment in the state prison for a period of 16 months, two years, or three years, by a fine of not more than five thousand dollars ($5,000), or by both imprisonment and fine; or by imprisonment in the county jail for a period of not more than one year, or by a fine of not more than one thousand dollars ($1,000), or by both imprisonment and fine.

(c) Whenever any person has, willfully and knowingly, with the intent to deceive, by means of false statement or representation, or by failing to disclose a material fact, or by impersonation or other fraudulent device, obtained or retained aid under the provisions of this division for himself or herself or for a child not in fact entitled thereto, the person obtaining this aid shall be punished as follows:

(1) If the total amount of the aid obtained or retained is four hundred dollars ($400) or less, by imprisonment in the county jail for a period of not more than six months, by a fine of not more than five hundred dollars ($500), or by both imprisonment and fine.

(2) If the total amount of the aid obtained or retained is more than four hundred dollars ($400), by imprisonment in the state prison for a period of 16 months, two years, or three years, by a fine of not more than five thousand dollars ($5,000), or by both imprisonment and fine; or by imprisonment in the county jail for a period of not more than one year, by a fine of not more than one thousand dollars ($1,000), or by both imprisonment and fine.

(d) Any person who knowingly uses, transfers, acquires, or possesses blank authorizations to participate in the federal Food Stamp Program in any manner not authorized by Chapter 10 (commencing with Section 18900) of Part 6 with the intent to defraud is guilty of a felony, punishable by imprisonment in the state prison for a period of 16 months, two years, or three years, by a fine of not more than five thousand dollars ($5,000), or by both imprisonment and fine.

(e) Any person who counterfeits or alters or knowingly uses, transfers, acquires, or possesses counterfeited or altered authorizations to participate in the federal Food Stamp Program or to receive food stamps or electronically transferred benefits in any manner not authorized by the Food Stamp Act of 1964 (Public Law 88-525 and all amendments thereto) or the federal regulations pursuant to the act is guilty of forgery.

(f) Any person who fraudulently appropriates food stamps, electronically transferred benefits, or authorizations to participate in the federal Food Stamp Program with which he or she has been entrusted pursuant to his or her duties as a public employee is guilty of embezzlement of public funds.

(g) Any person who knowingly uses, transfers, sells, purchases, or possesses food stamps, electronically transferred benefits, or

authorizations to participate in the federal Food Stamp Program in any manner not authorized by Chapter 10 (commencing with Section 18900), of Part 6, or by the federal Food Stamp Act of 1977 (Public Law 95-113 and all amendments thereto) (1) is guilty of a misdemeanor if the face value of the food stamp benefits or the authorizations to participate is four hundred dollars ($400) or less, and shall be punished by imprisonment in the county jail for a period of not more than six months, by a fine of not more than five hundred dollars ($500), or by both imprisonment and fine, or (2) is guilty of a felony if the face value of the food stamps or the authorizations to participate exceeds four hundred dollars ($400), and shall be punished by imprisonment in the state prison for a period of 16 months, two years, or three years, by a fine of not more than five thousand dollars ($5,000), or by both imprisonment and fine, or by imprisonment in the county jail for a period of not more than one year, or by a fine of not more than one thousand dollars ($1,000), or by both imprisonment and fine.

(h) (1) If the violation of subdivision (f) or (g) is committed by means of an electronic transfer of benefits, in addition and consecutive to the penalties for the violation, or attempted violation, of those subdivisions, the court shall impose the following punishment:

(A) If the electronic transfer of benefits exceeds fifty thousand dollars ($50,000), an additional term of one year in state prison.

(B) If the electronic transfer of benefits exceeds one hundred fifty thousand dollars ($150,000), an additional term of two years in state prison.

(C) If the electronic transfer of benefits exceeds one million dollars ($1,000,000), an additional term of three years in state prison.

(D) If the electronic transfer of benefits exceeds two million five hundred thousand dollars ($2,500,000), an additional term of four years.

(2) In any accusatory pleading involving multiple charges of violations of subdivision (f) or (g), or both, committed by means of an electronic transfer of benefits, the additional terms provided in paragraph (1) may be imposed if the aggregate losses to the victims from all violations exceed the amounts specified in this paragraph and arise from a common scheme or plan.

(i) A person who is punished by an additional term of imprisonment under another provision of law for a violation of subdivision (f) or (g) shall not receive an additional term of imprisonment under subdivision (h).

SEC. 24. Section 11004.1 is added to the Welfare and Institutions Code, to read:

11004.1. (a) In addition to Section 11004, this section shall apply to the CalWORKs program.

(b) The amount of any CalWORKs grant overpayment shall be the difference between the grant amount the assistance unit actually received and the grant amount the assistance unit would have received under the quarterly reporting, prospective budgeting system if no county error had occurred or if the recipient had timely, completely, and accurately reported as required under Sections 11265.1 and 11265.3. No overpayment shall be established based on any differences between the amount of income the county reasonably anticipated the recipient would receive during the quarterly reporting period and the income the recipient actually received during that period, provided the recipient's report was complete and accurate.

(c) No CalWORKs grant underpayment shall be established based on any differences between the amount of income the county reasonably anticipated the recipient would receive during the quarterly reporting period and the income the recipient actually received during that period.

SEC. 25. Section 11006.2 of the Welfare and Institutions Code is amended to read:

11006.2. (a) The department may provide for the delivery of public assistance payments at any time during the month.

(b) The department shall cooperate with county treasurers and private financial service providers, including depository institutions, licensed check sellers, data processing service vendors, and retail merchants, in developing and implementing an electronically based system for delivering public assistance payments to those recipients who do not have individual deposit accounts with financial institutions.

(c) (1) Notwithstanding any other provision of law, any person entitled to the receipt of public assistance payments may authorize payment to be directly deposited by electronic fund transfer into the person's account at the financial institution of his or her choice under a program for direct deposit by electronic transfer established by the county treasurer. The direct deposit shall discharge the department's obligation with respect to the payment.

(2) Each county treasurer shall make an agreement with one or more financial institutions participating in the Automated Clearing House pursuant to the local rules, and shall, by December 1, 2001, establish a program for the direct deposit by electronic fund transfer of payments to any person entitled to the receipt of public assistance benefits who authorizes the direct deposit thereof into the person's account at the financial institution of his or her choice.

(3) This subdivision shall apply in each county that offers a program for direct deposit by electronic funds transfer to some or all of its employees.

SEC. 26. Section 11020 of the Welfare and Institutions Code is amended to read:

11020. (a) Where a recipient under a categorical aid program other than CalWORKs has received aid in good faith but in fact owned excess property, he or she shall be considered to have been ineligible for aid during the period for which any excess property would have supported him or her at the rate of the aid granted to him or her. In such case the recipient or his estate shall repay the aid he received during this period of ineligibility.

(b) With respect to recipients under Chapter 3 (commencing with Section 12000) of this part, overpayments shall be collected by the federal government pursuant to federal law.

(c) Where a CalWORKs recipient has received aid in good faith, but in fact owned excess property, the recipient shall have an overpayment equal to the lesser of the amount of the excess property or the aid received during the period the recipient owned the excess property and the grant was not accurately determined under the quarterly reporting, prospective budgeting system due to the excess property.

SEC. 27. Section 11254 of the Welfare and Institutions Code is amended to read:

11254. (a) Subject to subdivision (b), in the case of any individual who is under the age of 18 years and has never married, and who is pregnant or has a dependent child in his or her care:

(1) The individual may receive aid under this chapter for the individual and the child, if otherwise eligible, only if the individual and child reside in a place of residence maintained by a parent, legal guardian, or other adult relative of the individual as the parent's, guardian's, or adult relative's own home, or in another adult-supervised supportive living arrangement.

(2) The aid, where possible, shall be provided to the parent, legal guardian, or other adult relative on behalf of the individual.

(b) Subdivision (a) does not apply in any of the following circumstances:

(1) The individual has no parent or legal guardian of his or her own who is living or whose whereabouts are known.

(2) No living parent or legal guardian of the individual allows the individual to live in the home of the parent or guardian.

(3) It is determined by the child protective services worker that the physical or emotional health or safety of the individual or child would be jeopardized if the individual and child lived in the same residence with the individual's own parent, legal guardian or other adult relative.

(4) The individual lived apart from his or her parent or legal guardian for a period of at least one year before either the birth of any such child or the individual having made application for aid under this chapter.

(5) It is determined in accordance with federal regulations that there is good cause for waiving subdivision (a).

SEC. 28. Section 11257 of the Welfare and Institutions Code is amended to read:

11257. (a) To the extent not inconsistent with Sections 11265.1, 11265.2, 11265.3, and 11004.1, no aid under this chapter shall be granted or paid for any child who has real or personal property, the combined market value reduced by any obligations or debts with respect to this property of which exceeds one thousand dollars ($1,000), or for any child or children in one family who have, or whose parents have, or the child or children and parents have, real and personal property the combined market value reduced by any obligations or debts with respect to this property which exceeds one thousand dollars ($1,000).

For purposes of this subdivision, real and personal property shall be considered both when actually available and when the applicant or recipient has a legal interest in a liquidated sum and has the legal ability to make that sum available for support and maintenance.

(b) Notwithstanding subdivision (a) above, an applicant or recipient may retain the following:

(1) Personal or real property owned by him or her, or in combination with any other person, without reference to its value, if it serves to provide the applicant or recipient with a home. If the basic home is a unit in a multiple dwelling, then only that unit shall be exempt.

For the purposes of paragraph (1), if an applicant has entered into a marital separation for the purpose of trial or legal separation or dissolution, real property which was the usual home of the applicant shall be exempt for three months following the end of the month in which aid begins. If the recipient was receiving aid when the marital separation occurred, the period of exemption shall be three months following the end of the month in which the separation occurs. To remain exempt following this three-month period, the home must be occupied by the recipient, or be unavailable for use, control, and possession due to legal proceedings affecting a property settlement or sale of the property.

(2) Personal property consisting of one automobile with maximum equity value as permitted by federal law.

(3) In addition to the foregoing, the director may at his or her discretion, and to the extent permitted by federal law, exempt other items of personal property not exempted under this section.

SEC. 29. Section 11265.1 of the Welfare and Institutions Code is repealed.

SEC. 30. Section 11265.1 is added to the Welfare and Institutions Code, to read:

11265.1. (a) In addition to the requirement for an annual redetermination of eligibility, counties shall redetermine recipient eligibility and grant amounts on a quarterly basis using prospective budgeting. Counties shall use the information reported on a recipient's

quarterly report form to prospectively determine eligibility and grant amount for the following quarterly reporting period.

(b) A quarterly reporting period shall be three consecutive calendar months. The recipient shall submit one quarterly report form for each quarterly reporting period. Counties shall provide a quarterly report form to recipients at the end of the second month of the quarterly reporting period, and recipients shall return the completed quarterly report form with required verification to the county by the 11th day of the third month of the quarterly reporting period.

(c) Counties may establish staggered quarterly reporting cycles based on factors established or approved by the department, including, but not limited to, application date or case number.

(d) The quarterly report form shall be signed under penalty of perjury, and shall include only information necessary to determine CalWORKs and food stamp eligibility and calculate the CalWORKs grant amount and food stamp allotment, as specified by the department. The form shall be as comprehensible as possible for recipients and shall require recipients to provide the following:

(1) Information about income received during the second month of the quarterly reporting period.

(2) Information about income that the recipient anticipates receiving during the following quarterly reporting period.

(3) Any other changes to facts required to be reported, together with any changes to those facts that the recipient anticipates will occur. The recipient shall provide verification as specified by the department with the quarterly report form.

(e) A quarterly report form shall be considered complete if the following requirements, as specified by the department, are met:

(1) The form is signed no earlier than the first day of the third month of the quarterly reporting period by the persons specified by the department.

(2) All questions and items pertaining to CalWORKs and food stamp eligibility and grant amount are answered.

(3) Verification required by the department is provided.

(f) If a recipient fails to submit a complete quarterly report form, as defined in subdivision (e), by the 11th day of the third month of the quarterly reporting period, the county shall provide the recipient with a notice that the county will terminate benefits at the end of the month. Prior to terminating benefits, the county shall attempt to make personal contact to remind the recipient that a completed report is due, or, if contact is not made, shall send a reminder notice to the recipient no later than five days prior to the end of the month. Any discontinuance notice shall be rescinded if a complete report is received by the first working day of the first month of the following quarterly reporting period.

(g) The county may determine, at any time prior to the last day of the calendar month following discontinuance for nonsubmission of a quarterly report form, that a recipient had good cause for failing to submit a complete quarterly report form, as defined in subdivision (e), by the first working day of the month following discontinuance. If the county finds a recipient had good cause, as defined by the department, it shall rescind the discontinuance notice. Good cause exists only when the recipient cannot reasonably be expected to fulfill his or her reporting responsibilities due to factors outside of the recipient's control.

SEC. 31. Section 11265.2 of the Welfare and Institutions Code is repealed.

SEC. 32. Section 11265.2 is added to the Welfare and Institutions Code, to read:

11265.2. (a) The grant amount a recipient shall be entitled to receive for each month of the quarterly reporting period shall be prospectively determined as provided by this section. If a recipient reports that he or she does not anticipate any changes in income during the upcoming quarter, compared to the income the recipient reported actually receiving on the quarterly report form, the grant shall be calculated using the actual income received. If a recipient reports that he or she anticipates a change in income in one or more months of the upcoming quarter, the county shall determine whether the recipient's income is reasonably anticipated. The grant shall be calculated using the income that the county determines is reasonably anticipated in each of the three months of the upcoming quarter.

(b) For the purposes of the quarterly reporting, prospective budgeting system, income shall be considered to be ''reasonably anticipated'' if the county is reasonably certain of the amount of income and that the income will be received during the quarterly reporting period. The county shall determine what income is ''reasonably anticipated'' based on information provided by the recipient and any other available information.

(c) If a recipient reports that their income in the upcoming quarter will be different each month and the county needs additional information to determine a recipient's reasonably anticipated income for the following quarter, the county may require the recipient to provide information about income for each month of the prior quarter.

(d) Grant calculations pursuant to subdivision (a) may not be revised to adjust the grant amount during the quarterly reporting period, except as provided in Section 11265.3 and subdivisions (e), (f), (g), and (h), and as otherwise established by the department.

(e) Notwithstanding subdivision (d), statutes and regulations relating to (1) the 60-month time limit, (2) age limitations for children under Section 11253, and (3) sanctions and financial penalties affecting

eligibility or grant amount shall be applicable as provided in such statutes and regulations. Eligibility and grant amount shall be adjusted during the quarterly reporting period pursuant to such statutes and regulations effective with the first monthly grant after timely and adequate notice is provided.

(f) Notwithstanding Section 11056, if an applicant applies for assistance for a child who is currently aided in another assistance unit, and the county determines that the applicant has care and control of the child, as specified by the department, and is otherwise eligible, the county shall discontinue aid to the child in the existing assistance unit and shall aid the child in the applicant's assistance unit effective as of the first of the month following the discontinuance of the child from the existing assistance unit.

(g) If the county is notified that a child for whom CalWORKs assistance is currently being paid has been placed in a foster care home, the county shall discontinue aid to the child at the end of the month of placement. The county shall discontinue the case if the remaining assistance unit members are not otherwise eligible.

(h) If the county determines that a recipient is no longer a California resident, pursuant to Section 11100, the recipient shall be discontinued. The county shall discontinue the case if the remaining assistance unit members are not otherwise eligible.

SEC. 33. Section 11265.3 is added to the Welfare and Institutions Code, to read:

11265.3. (a) In addition to submitting the quarterly report form as required in Section 11265.1, during the quarterly reporting period, a recipient shall report the following changes to the county verbally or in writing, within 10 days of the change:

(1) The receipt at any time during a quarterly reporting period of gross monthly income in an amount that exceeds 130 percent of the federal poverty level for the recipient's family income, as provided by the department, in an amount that is likely to render the recipient ineligible, as provided by the department.

(2) The occurrence at any time during a quarterly reporting period of a drug felony conviction as specified in Section 11251.3.

(3) The occurrence, at any time during a quarterly reporting period, of an individual fleeing prosecution or custody or confinement, or violating a condition of probation or parole as specified in Section 11486.5.

(b) Counties shall inform each recipient of the duty to report under paragraph (1) of subdivision (a), the consequences of failing to report, and the dollar amount of gross monthly income by family size that exceeds 130 percent of the federal poverty level an amount of income

likely to render the family ineligible for benefits no less frequently than once per quarter.

(c) When a recipient reports actual gross monthly income in an amount that exceeds 130 percent of the federal poverty level in any month, pursuant to paragraph (1) of subdivision (a) the county shall redetermine eligibility and grant amounts as follows:

(1) If the recipient reports a change for the first or second month of a current quarterly reporting period, the county shall redetermine eligibility and grant amount for the current quarter by averaging the gross monthly income for any past month or months in the current quarter that was reasonably anticipated when the grant was previously calculated; the actual gross monthly income required to be reported under paragraph (1) of subdivision (a); and the gross monthly income that is reasonably anticipated for any future month or months remaining in the quarter. If the recipient is determined to be financially ineligible based on this average income, the county shall discontinue the recipient after timely and adequate notice. If the recipient is determined to be financially eligible using this average income, no change shall be made in the recipient's grant amount for the current quarterly reporting period.

(2) If the recipient reports a change for the third month of a current quarterly reporting period, the county shall not redetermine eligibility for the current quarterly reporting period, but shall redetermine eligibility and grant amount for the following quarterly reporting period as provided in Section 11265.2.

(d) (1) During the quarterly reporting period, a recipient may report to the county, verbally or in writing, any changes in income or household circumstances that may increase the recipient's grant.

(2) Counties shall act upon changes in income reported during the quarterly reporting period that result in an increase in benefits, after verification specified by the department is received. Reported changes in income that increase the grant shall be effective for the entire month in which the change is reported. If the reported change in income results in an increase in benefits, the county shall issue the increased benefit amount within 10 days of receiving required verification.

(3) (A) When a decrease in gross monthly income is voluntarily reported and verified, the county shall redetermine the grant for the current month and any remaining months in the quarterly reporting period by averaging the gross monthly income for any past month in the current quarter that was reasonably anticipated when the grant was previously calculated; the actual gross monthly income reported and verified from the voluntary report for the current month; and the gross monthly income that is reasonably anticipated for any future month remaining in the quarterly reporting period.

(B) When the average is determined pursuant to subparagraph (A), and a grant amount is calculated based upon the averaged income, if the grant amount is higher than the grant currently in effect, the county shall revise the grant for the current month and any remaining months in the quarter to the higher amount and shall issue any increased benefit amount as provided in paragraph (2).

(4) Except as provided in subdivision (e), counties shall act only upon changes in household composition voluntarily reported by the recipients during the quarterly reporting period that result in an increase in benefits, after verification specified by the department is received. If the reported change in household composition is for the first or second month of the quarterly reporting period and results in an increase in benefits, the county shall redetermine the grant effective for the month following the month in which the change was reported. If the reported change in household composition is for the third month of a quarterly reporting period, the county shall not redetermine the grant for the current quarterly reporting period, but shall redetermine the grant for the following reporting period as provided in Section 11265.2.

(e) During the quarterly reporting period, a recipient may request that the county discontinue the recipient's entire assistance unit or any individual member of the assistance unit who is no longer in the home or is an optional member of the assistance unit. If the recipient's request was verbal, the county shall provide a 10-day notice before discontinuing benefits. If the recipient's report was in writing, the county shall discontinue benefits effective the end of the month in which the request is made, and simultaneously issue a notice informing the recipient of the discontinuance.

SEC. 34. Section 11323.3 is added to the Welfare and Institutions Code, to read:

11323.3. (a) It is the intent of the Legislature that all CalWORKs applicants and recipients be aware of their potential liability for child care payment, and that child care providers be promptly paid for their services to eligible families.

(b) An applicant for, or a recipient of, CalWORKs benefits shall be provided written notice, both at the time of application and when he or she signs an original or amended welfare-to-work plan, of the availability of paid child care as provided in Section 11323.2. The notice shall inform applicants and recipients of all of the following:

(1) Paid child care is available to allow them to be employed or participate in welfare-to-work activities.

(2) Assistance in finding and choosing a child care provider is available.

(3) A recipient is required to inform the county welfare department of his or her need for paid child care as soon as that need arises.

(4) The recipient is required to request a child care subsidy from the county within 30 days from the first day child care services are received from each different provider, to be fully reimbursed for child care services.

(c) An applicant for, or recipient of, CalWORKs benefits shall be required to sign a copy of the written notice acknowledging that he or she has been informed of and understands the notice. The signed notice shall be retained in the client's file.

(d) No payment shall be made for child care services provided pursuant to Section 8351 of the Education Code more than 30 days prior to the recipient's initial request for payment for the child care service from that provider, when the recipient received the written notice provided in subdivision (b).

(e) The department shall develop regulations to implement this section.

SEC. 35. Section 11325.7 of the Welfare and Institutions Code is amended to read:

11325.7. (a) It is the intent of the Legislature in enacting this section to create a funding stream and program that assists certain recipients of aid under this chapter to receive necessary mental health services, including case management and treatment, thereby enabling them to make the transition from welfare to work. This funding stream shall be used specifically to serve recipients in need of mental health services, and shall be accounted for and expended by each county in a manner that ensures that recipients in need of mental health services are receiving appropriate services.

(b) The county plan required by Section 10531 shall include a plan for the development of mental health employment assistance services, developed jointly by the county welfare department and the county department of mental health. The plan shall have as its goal the treatment of mental or emotional disabilities that may limit or impair the ability of a recipient to make the transition from welfare-to-work, or that may limit or impair the ability to retain employment over a long-term period. The plan shall be developed in a manner consistent with both the county's welfare-to-work program and the county's consolidated mental health Medi-Cal services plan. The county may use community based providers, as necessary, that have experience in addressing the needs of the CalWORKs population. The county, whenever possible, shall ensure that the services provided qualify for federal reimbursement of the nonstate share of Medi-Cal costs.

(c) Subject to specific expenditure authority, mental health services available under this section shall include all of the following elements:

(1) Assessment for the purpose of identifying the level of the participant's mental health needs and the appropriate level of treatment and rehabilitation for the participant.

(2) Case management, as appropriate, as determined by the county.

(3) Treatment and rehabilitation services, that shall include counseling, as necessary to overcome mental health barriers to employment and mental health barriers to retaining employment, in coordination with an individual's welfare-to-work plan.

(4) In cases where a secondary diagnosis of substance abuse is made in a person referred for mental or emotional disorders, the welfare-to-work plan shall also address the substance abuse treatment needs of the participant.

(5) A process by which the county can identify those with severe mental disabilities that may qualify them for aid under Chapter 3 (commencing with Section 12000).

(d) Any funds appropriated by the Legislature to cover the nonfederal costs of the mental health employment assistance services required by this section shall be allocated consistent with the formula used to distribute each county's CalWORKs program allocation. Each county shall report annually to the state the number of CalWORKs program recipients who received mental health services and the extent to which the allocation is sufficient to meet the need for these services as determined by the county. The State Department of Mental Health shall develop a uniform methodology for ensuring that this allocation supplements and does not supplant current expenditure levels for mental health services for this population.

(e) (1) Any county may participate in a pilot program pursuant to this subdivision to set aside a specific amount of funds appropriated by the Legislature to cover the costs of the mental health employment assistance services required by this section for utilization as part of a Medi-Cal mental health managed care program, in a form and at a time to be determined by the State Department of Social Services. The department shall develop a plan for operation of this pilot program no later than a time sufficient to allow initiation of this pilot program in the 2003–04 fiscal year. In no event shall the State Department of Social Services authorize more than ten million dollars ($10,000,000) for the pilot program in any fiscal year, pending review of the pilot program. The department shall report to the Legislature during budget hearings held in 2003 on whether to continue the operation of the pilot program in the 2003–04 fiscal year or to recommend that the pilot program should be canceled.

(2) Any county may participate in a test of coordinating Medi-Cal mental health managed care services and CalWORKs program mental health employment assistance services if the county ensures that the

services are consistent with the county's CalWORKs plan required by Section 10531 and the county's Medi-Cal mental health program.

(3) The State Department of Social Services shall report to the Legislature during budget hearings held in 2005 on the extent to which counties participating in the pilot program were able to expand services using federal matching funds, and any impact on continuity of care for CalWORKs recipients.

(4) This subdivision shall become inoperative June 1, 2005.

SEC. 36. Section 11450 of the Welfare and Institutions Code is amended to read:

11450. (a) (1) Aid shall be paid for each needy family, which shall include all eligible brothers and sisters of each eligible applicant or recipient child and the parents of the children, but shall not include unborn children, or recipients of aid under Chapter 3 (commencing with Section 12000), qualified for aid under this chapter. In determining the amount of aid paid, and notwithstanding the minimum basic standards of adequate care specified in Section 11452, the family's income, exclusive of any amounts considered exempt as income or paid pursuant to subdivision (e) or Section 11453.1, averaged for the prospective quarter pursuant to Sections 11265.2 and 11265.3, and then calculated pursuant to Section 11451.5, shall be deducted from the sum specified in the following table, as adjusted for cost-of-living increases pursuant to Section 11453 and paragraph (2). In no case shall the amount of aid paid for each month exceed the sum specified in the following table, as adjusted for cost-of-living increases pursuant to Section 11453 and paragraph (2), plus any special needs, as specified in subdivisions (c), (e), and (f):

Number of eligible needy persons in the same home	Maximum aid
1	$ 326
2	535
3	663
4	788
5	899
6	1,010
7	1,109
8	1,209
9	1,306
10 or more	1,403

If, when, and during such times as the United States government increases or decreases its contributions in assistance of needy children in this state above or below the amount paid on July 1, 1972, the amounts specified in the above table shall be increased or decreased by an amount equal to that increase or decrease by the United States government, provided that no increase or decrease shall be subject to subsequent adjustment pursuant to Section 11453.

(2) The sums specified in paragraph (1) shall not be adjusted for cost of living for the 1990–91, 1991–92, 1992–93, 1993–94, 1994–95, 1995–96, 1996–97, and 1997–98 fiscal years, and through October 31, 1998, nor shall that amount be included in the base for calculating any cost-of-living increases for any fiscal year thereafter. Elimination of the cost-of-living adjustment pursuant to this paragraph shall satisfy the requirements of Section 11453.05, and no further reduction shall be made pursuant to that section.

(b) When the family does not include a needy child qualified for aid under this chapter, aid shall be paid to a pregnant mother for the month in which the birth is anticipated and for the three-month period immediately prior to the month in which the birth is anticipated in the amount which would otherwise be paid to one person, as specified in subdivision (a), if the mother, and child if born, would have qualified for aid under this chapter. Verification of pregnancy shall be required as a condition of eligibility for aid under this subdivision. Aid shall also be paid to a pregnant woman with no other children in the amount which would otherwise be paid to one person under subdivision (a) at any time after verification of pregnancy if the pregnant woman is also eligible for the Cal-Learn Program described in Article 3.5 (commencing with Section 11331) and if the mother and child, if born, would have qualified for aid under this chapter.

(c) The amount of forty-seven dollars ($47) per month shall be paid to pregnant mothers qualified for aid under subdivision (a) or (b) to meet special needs resulting from pregnancy if the mother, and child, if born, would have qualified for aid under this chapter. County welfare departments shall refer all recipients of aid under this subdivision to a local provider of the Women, Infants and Children program. If that payment to pregnant mothers qualified for aid under subdivision (a) is considered income under federal law in the first five months of pregnancy, payments under this subdivision shall not apply to persons eligible under subdivision (a), except for the month in which birth is anticipated and for the three-month period immediately prior to the month in which delivery is anticipated, if the mother, and the child if born, would have qualified for aid under this chapter.

(d) For children receiving AFDC-FC under this chapter, there shall be paid, exclusive of any amount considered exempt as income, an

amount of aid each month which, when added to the child's income, is equal to the rate specified in Section 11460, 11461, 11462, 11462.1, or 11463. In addition, the child shall be eligible for special needs, as specified in departmental regulations.

(e) In addition to the amounts payable under subdivision (a) and Section 11453.1, a family shall be entitled to receive an allowance for recurring special needs not common to a majority of recipients. These recurring special needs shall include, but not be limited to, special diets upon the recommendation of a physician for circumstances other than pregnancy, and unusual costs of transportation, laundry, housekeeping service, telephone, and utilities. The recurring special needs allowance for each family per month shall not exceed that amount resulting from multiplying the sum of ten dollars ($10) by the number of recipients in the family who are eligible for assistance.

(f) After a family has used all available liquid resources, both exempt and nonexempt, in excess of one hundred dollars ($100), the family shall also be entitled to receive an allowance for nonrecurring special needs.

(1) An allowance for nonrecurring special needs shall be granted for replacement of clothing and household equipment and for emergency housing needs other than those needs addressed by paragraph (2). These needs shall be caused by sudden and unusual circumstances beyond the control of the needy family. The department shall establish the allowance for each of the nonrecurring special need items. The sum of all nonrecurring special needs provided by this subdivision shall not exceed six hundred dollars ($600) per event.

(2) Homeless assistance is available to a homeless family seeking shelter when the family is eligible for aid under this chapter. Homeless assistance for temporary shelter is also available to homeless families which are apparently eligible for aid under this chapter. Apparent eligibility exists when evidence presented by the applicant or which is otherwise available to the county welfare department and the information provided on the application documents indicate that there would be eligibility for aid under this chapter if the evidence and information were verified. However, an alien applicant who does not provide verification of his or her eligible alien status, or a woman with no eligible children who does not provide medical verification of pregnancy, is not apparently eligible for purposes of this section.

A family is considered homeless, for the purpose of this section, when the family lacks a fixed and regular nighttime residence; or the family has a primary nighttime residence that is a supervised publicly or privately operated shelter designed to provide temporary living accommodations; or the family is residing in a public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings.

(A) (i) A nonrecurring special need of forty dollars ($40) a day shall be available to families for the costs of temporary shelter, subject to the requirements of this paragraph. County welfare departments may increase the daily amount available for temporary shelter to large families as necessary to secure the additional bed space needed by the family.

(ii) This special need shall be granted or denied immediately upon the family's application for homeless assistance, and benefits shall be available for up to three working days. The county welfare department shall verify the family's homelessness within the first three working days and if the family meets the criteria of questionable homelessness established by the department, the county welfare department shall refer the family to its early fraud prevention and detection unit, if the county has such a unit, for assistance in the verification of homelessness within this period.

(iii) After homelessness has been verified, the three-day limit shall be extended for a period of time which, when added to the initial benefits provided, does not exceed a total of 16 calendar days. This extension of benefits shall be done in increments of one week and shall be based upon searching for permanent housing which shall be documented on a housing search form; good cause; or other circumstances defined by the department. Documentation of housing search shall be required for the initial extension of benefits beyond the three-day limit and on a weekly basis thereafter as long as the family is receiving temporary shelter benefits. Good cause shall include, but is not limited to, situations in which the county welfare department has determined that the family, to the extent it is capable, has made a good faith but unsuccessful effort to secure permanent housing while receiving temporary shelter benefits.

(B) A nonrecurring special need for permanent housing assistance is available to pay for last month's rent and security deposits when these payments are reasonable conditions of securing a residence.

The last month's rent portion of the payment (1) shall not exceed 80 percent of the family's maximum aid payment without special needs for a family of that size and (2) shall only be made to families that have found permanent housing costing no more than 80 percent of the family's maximum aid payment without special needs for a family of that size, in accordance with the maximum aid schedule specified in subdivision (a).

However, if the county welfare department determines that a family intends to reside with individuals who will be sharing housing costs, the county welfare department shall, in appropriate circumstances, set aside the condition specified in clause (2) of the preceding paragraph.

(C) The nonrecurring special need for permanent housing assistance is also available to cover the standard costs of deposits for utilities which are necessary for the health and safety of the family.

(D) A payment for or denial of permanent housing assistance shall be issued no later than one working day from the time that a family presents evidence of the availability of permanent housing. If an applicant family provides evidence of the availability of permanent housing before the county welfare department has established eligibility for aid under this chapter, the county welfare department shall complete the eligibility determination so that the denial of or payment for permanent housing assistance is issued within one working day from the submission of evidence of the availability of permanent housing, unless the family has failed to provide all of the verification necessary to establish eligibility for aid under this chapter.

(E) (i) Except as provided in clauses (ii) and (iii), eligibility for the temporary shelter assistance and the permanent housing assistance pursuant to this paragraph shall be limited to one period of up to 16 consecutive calendar days of temporary assistance and one payment of permanent assistance. Any family that includes a parent or nonparent caretaker relative living in the home who has previously received temporary or permanent homeless assistance at any time on behalf of an eligible child shall not be eligible for further homeless assistance. Any person who applies for homeless assistance benefits shall be informed that the temporary shelter benefit of up to 16 consecutive days is available only once in a lifetime, with certain exceptions, and that a break in the consecutive use of the benefit constitutes permanent exhaustion of the temporary benefit.

(ii) A family that becomes homeless as a direct and primary result of a state or federally declared natural disaster shall be eligible for temporary and permanent homeless assistance.

(iii) A family shall be eligible for temporary and permanent homeless assistance when homelessness is a direct result of domestic violence by a spouse, partner, or roommate; physical or mental illness that is medically verified that shall not include a diagnosis of alcoholism, drug addiction, or psychological stress; or, the uninhabitability of the former residence caused by sudden and unusual circumstances beyond the control of the family including natural catastrophe, fire, or condemnation. These circumstances shall be verified by a third-party governmental or private health and human services agency and homeless assistance payments based on these specific circumstances may not be received more often than once in any 12-month period. A county may require that a recipient of homeless assistance benefits who qualifies under this paragraph for a second time in a 24-month period participate

in a homelessness avoidance case plan as a condition of eligibility for homeless assistance benefits.

(iv) The county welfare department shall report to the department through a statewide homeless assistance payment indicator system, necessary data, as requested by the department, regarding all recipients of aid under this paragraph.

(F) The county welfare departments, and all other entities participating in the costs of the AFDC program, have the right in their share to any refunds resulting from payment of the permanent housing. However, if an emergency requires the family to move within the 12-month period specified in subparagraph (E), the family shall be allowed to use any refunds received from its deposits to meet the costs of moving to another residence.

(G) Payments to providers for temporary shelter and permanent housing and utilities shall be made on behalf of families requesting these payments.

(H) The daily amount for the temporary shelter special need for homeless assistance may be increased if authorized by the current year's Budget Act by specifying a different daily allowance and appropriating the funds therefor.

(I) No payment shall be made pursuant to this paragraph unless the provider of housing is a commercial establishment, shelter, or person in the business of renting properties who has a history of renting properties.

(g) The department shall establish rules and regulations assuring the uniform application statewide of this subdivision.

(h) The department shall notify all applicants and recipients of aid through the standardized application form that these benefits are available and shall provide an opportunity for recipients to apply for the funds quickly and efficiently.

(i) Except for the purposes of Section 15200, the amounts payable to recipients pursuant to Section 11453.1 shall not constitute part of the payment schedule set forth in subdivision (a).

The amounts payable to recipients pursuant to Section 11453.1 shall not constitute income to recipients of aid under this section.

(j) For children receiving Kin-GAP pursuant to Article 4.5 (commencing with Section 11360) of Chapter 2, there shall be paid, exclusive of any amount considered exempt as income, an amount of aid each month, which, when added to the child's income, is equal to the rate specified in Section 11364.

SEC. 37. Section 11450.2 of the Welfare and Institutions Code is repealed.

SEC. 38. Section 11450.5 of the Welfare and Institutions Code is amended to read:

11450.5. For purposes of computing and paying aid grants under this chapter, the director shall adopt regulations establishing a budgeting system consistent with Sections 11265.1, 11265.2, and 11265.3. Nothing in this section, or Sections 11004, 11257 and 11450, or any other provision of this code, shall be interpreted as prohibiting the establishment of, or otherwise restricting the operation of, any budgeting system adopted by the director.

SEC. 39. Section 11450.12 of the Welfare and Institutions Code is amended to read:

11450.12. (a) An applicant family shall not be eligible for aid under this chapter unless the family's income, exclusive of the first ninety dollars ($90) of earned income for each employed person, is less than the minimum basic standard of adequate care, as specified in Section 11452.

(b) A recipient family shall not be eligible for further aid under this chapter if reasonably anticipated income, less exempt income, averaged over the quarter pursuant to Sections 11265.2 and 11265.3, and exclusive of amounts exempt under Section 11451.5, equals or exceeds the maximum aid payment specified in Section 11450.

SEC. 40. Section 11450.13 of the Welfare and Institutions Code is amended to read:

11450.13. In calculating the amount of aid to which an assistance unit is entitled in accordance with Section 11320.15, the maximum aid payment, adjusted to reflect the removal of the adult or adults from the assistance unit, shall be reduced by the gross income of the adult or adults removed from the assistance unit, averaged over the quarter pursuant to Sections 11265.2 and 11265.3, and less any amounts exempted pursuant to Section 11451.5. Aid may be provided in the form of cash or vouchers, at the option of the county.

SEC. 41. Section 11451.5 of the Welfare and Institutions Code is amended to read:

11451.5. (a) Except as provided by subdivision (f) of Section 11322.6, the following income, averaged over the quarter pursuant to Sections 11265.2 and 11265.3, and shall be exempt from the calculation of the income of the family for purposes of subdivision (a) of Section 11450:

(1) If disability-based unearned income does not exceed two hundred twenty-five dollars ($225), both of the following amounts:

(A) All disability-based unearned income plus any amount of not otherwise exempt earned income equal to the amount of the difference between the amount of disability-based unearned income and two hundred twenty-five dollars ($225).

(B) Fifty percent of all not otherwise exempt earned income in excess of the amount applied to meet the differential applied in subparagraph (A).

(2) If disability-based unearned income exceeds two hundred twenty-five dollars ($225), both of the following amounts:

(A) All of the first two hundred twenty-five dollars ($225) in disability-based unearned income.

(B) Fifty percent of all earned income.

(b) For purposes of this section:

(1) Earned income means gross income received as wages, salary, employer provided sick leave benefits, commissions, or profits from activities such as a business enterprise or farming in which the recipient is engaged as a self-employed individual or as an employee.

(2) Disability-based unearned income means State Disability Insurance benefits, private disability insurance benefits, Temporary Workers' Compensation benefits, and social security disability benefits.

(3) Unearned income means any income not described in paragraph (1) or (2).

SEC. 42. Section 11453 of the Welfare and Institutions Code is amended to read:

11453. (a) Except as provided in subdivision (c), the amounts set forth in Section 11452 and subdivision (a) of Section 11450 shall be adjusted annually by the department to reflect any increases or decreases in the cost of living. These adjustments shall become effective July 1 of each year, unless otherwise specified by the Legislature. For the 2000–01 fiscal year to the 2003–04 fiscal year, inclusive, these adjustments shall become effective October 1 of each year. The cost-of-living adjustment shall be calculated by the Department of Finance based on the changes in the California Necessities Index, which as used in this section means the weighted average changes for food, clothing, fuel, utilities, rent, and transportation for low-income consumers. The computation of annual adjustments in the California Necessities Index shall be made in accordance with the following steps:

(1) The base period expenditure amounts for each expenditure category within the California Necessities Index used to compute the annual grant adjustment are:

Food	$ 3,027
Clothing (apparel and upkeep)	406
Fuel and other utilities	529
Rent, residential	4,883
Transportation	1,757
Total	$10,602

(2) Based on the appropriate components of the Consumer Price Index for All Urban Consumers, as published by the United States Department of Labor, Bureau of Labor Statistics, the percentage change shall be determined for the 12-month period ending with the December preceding the year for which the cost-of-living adjustment will take effect, for each expenditure category specified in subdivision (a) within the following geographical areas: Los Angeles-Long Beach-Anaheim, San Francisco-Oakland, San Diego, and, to the extent statistically valid information is available from the Bureau of Labor Statistics, additional geographical areas within the state which include not less than 80 percent of recipients of aid under this chapter.

(3) Calculate a weighted percentage change for each of the expenditure categories specified in subdivision (a) using the applicable weighting factors for each area used by the State Department of Industrial Relations to calculate the California Consumer Price Index (CCPI).

(4) Calculate a category adjustment factor for each expenditure category in subdivision (a) by (1) adding 100 to the applicable weighted percentage change as determined in paragraph (2) and (2) dividing the sum by 100.

(5) Determine the expenditure amounts for the current year by multiplying each expenditure amount determined for the prior year by the applicable category adjustment factor determined in paragraph (4).

(6) Determine the overall adjustment factor by dividing (1) the sum of the expenditure amounts as determined in paragraph (4) for the current year by (2) the sum of the expenditure amounts as determined in subdivision (d) for the prior year.

(b) The overall adjustment factor determined by the preceding computation steps shall be multiplied by the schedules established pursuant to Section 11452 and subdivision (a) of Section 11450 as are in effect during the month of June preceding the fiscal year in which the adjustments are to occur and the product rounded to the nearest dollar. The resultant amounts shall constitute the new schedules which shall be filed with the Secretary of State.

(c) (1) No adjustment to the maximum aid payment set forth in subdivision (a) of Section 11450 shall be made under this section for the purpose of increasing the benefits under this chapter for the 1990–91, 1991–92, 1992–93, 1993–94, 1994–95, 1995–96, 1996–97, and 1997–98 fiscal years, and through October 31, 1998, to reflect any change in the cost of living. For the 1998–99 fiscal year, the cost-of-living adjustment that would have been provided on July 1, 1998, pursuant to subdivision (a) shall be made on November 1, 1998. Elimination of the cost-of-living adjustment pursuant to this paragraph

shall satisfy the requirements of Section 11453.05, and no further reduction shall be made pursuant to that section.

(2) No adjustment to the minimum basic standard of adequate care set forth in Section 11452 shall be made under this section for the purpose of increasing the benefits under this chapter for the 1990–91 and 1991–92 fiscal years to reflect any change in the cost of living.

(3) In any fiscal year commencing with the 2000–01 fiscal year to the 2003–04 fiscal year, inclusive, when there is any increase in tax relief pursuant to the applicable paragraph of subdivision (a) of Section 10754 of the Revenue and Taxation Code, then the increase pursuant to subdivision (a) of this section shall occur. In any fiscal year commencing with the 2000–01 fiscal year to the 2003–04 fiscal year, inclusive, when there is no increase in tax relief pursuant to the applicable paragraph of subdivision (a) of Section 10754 of the Revenue and Taxation Code, then any increase pursuant to subdivision (a) of this section shall be suspended.

(4) Notwithstanding paragraph (3), an adjustment to the maximum aid payments set forth in subdivision (a) of Section 11450 shall be made under this section for the 2002–03 fiscal year, but the adjustment shall become effective June 1, 2003.

(d) Adjustments for subsequent fiscal years pursuant to this section shall not include any adjustments for any fiscal year in which the cost of living was suspended pursuant to subdivision (c).

SEC. 43. Section 11462 of the Welfare and Institutions Code is amended to read:

11462. (a) (1) Effective July 1, 1990, foster care providers licensed as group homes, as defined in departmental regulations, including public child care institutions, as defined in Section 11402.5, shall have rates established by classifying each group home program and applying the standardized schedule of rates. The department shall collect information from group providers beginning January 1, 1990, in order to classify each group home program.

(2) Notwithstanding paragraph (1), foster care providers licensed as group homes shall have rates established only if the group home is organized and operated on a nonprofit basis as required under subdivision (h) of Section 11400. The department shall terminate the rate effective January 1, 1993, of any group home not organized and operated on a nonprofit basis as required under subdivision (h) of Section 11400.

(b) A group home program shall be initially classified, for purposes of emergency regulations, according to the level of care and services to be provided using a point system developed by the department and described in the report, ''The Classification of Group Home Programs

under the Standardized Schedule of Rates System,'' prepared by the State Department of Social Services, August 30, 1989.

(c) The rate for each rate classification level (RCL) has been determined by the department with data from the AFDC-FC Group Home Rate Classification Pilot Study. The rates effective July 1, 1990, were developed using 1985 calendar year costs and reflect adjustments to the costs for each fiscal year, starting with the 1986–87 fiscal year, by the amount of the California Necessities Index computed pursuant to the methodology described in Section 11453. The data obtained by the department using 1985 calendar year costs shall be updated and revised by January 1, 1993.

(d) As used in this section, ''standardized schedule of rates'' means a listing of the 14 rate classification levels, and the single rate established for each RCL.

(e) Except as specified in paragraph (1), the department shall determine the RCL for each group home program on a prospective basis, according to the level of care and services that the group home operator projects will be provided during the period of time for which the rate is being established.

(1) (A) For new and existing providers requesting the establishment of an RCL, and for existing group home programs requesting an RCL increase, the department shall determine the RCL no later than 13 months after the effective date of the provisional rate. The determination of the RCL shall be based on a program audit of documentation and other information that verifies the level of care and supervision provided by the group home program during a period of the two full calendar months or 60 consecutive days, whichever is longer, preceding the date of the program audit, unless the group home program requests a lower RCL. The program audit shall not cover the first six months of operation under the provisional rate. Pending the department's issuance of the program audit report that determines the RCL for the group home program, the group home program shall be eligible to receive a provisional rate that shall be based on the level of care and service that the group home program proposes it will provide. The group home program shall be eligible to receive only the RCL determined by the department during the pendency of any appeal of the department's RCL determination.

(B) A group home program may apply for an increase in its RCL no earlier than two years from the date the department has determined the group home program's rate, unless the host county, the primary placing county, or a regional consortium of counties submits to the department in writing that the program is needed in that county, that the provider is capable of effectively and efficiently operating the proposed program, and that the provider is willing and able to accept AFDC-FC children for

placement who are determined by the placing agency to need the level of care and services that will be provided by the program.

(C) To ensure efficient administration of the department's audit responsibilities, and to avoid the fraudulent creation of records, group home programs shall make records that are relevant to the RCL determination available to the department in a timely manner. Except as provided in this section, the department may refuse to consider, for purposes of determining the rate, any documents that are relevant to the determination of the RCL that are not made available by the group home provider by the date the group home provider requests a hearing on the department's RCL determination. The department may refuse to consider for purposes of determining the rate, the following records, unless the group home provider makes the records available to the department during the field work portion of the department's program audit:

(i) Records of each employee's full name, home address, occupation, and social security number.

(ii) Time records showing when the employee begins and ends each work period, meal periods, split shift intervals, and total daily hours worked.

(iii) Total wages paid each payroll period.

(iv) Records required to be maintained by licensed group home providers under the provisions of Title 22 of the California Code of Regulations that are relevant to the RCL determination.

(D) To minimize financial abuse in the startup of group home programs, when the department's RCL determination is more than three levels lower than the RCL level proposed by the group home provider, and the group home provider does not appeal the department's RCL determination, the department shall terminate the rate of a group home program 45 days after issuance of its program audit report. When the group home provider requests a hearing on the department's RCL determination, and the RCL determined by the director under subparagraph (E) is more than three levels lower than the RCL level proposed by the group home provider, the department shall terminate the rate of a group home program within 30 days of issuance of the director's decision. Notwithstanding the reapplication provisions in subparagraph (B), the department shall deny any request for a new or increased RCL from a group home provider whose RCL is terminated pursuant to this subparagraph, for a period of no greater than two years from the effective date of the RCL termination.

(E) A group home provider may request a hearing of the department's RCL determination under subparagraph (A) no later than 30 days after the date the department issues its RCL determination. The department's RCL determination shall be final if the group home provider does not

request a hearing within the prescribed time. Within 60 days of receipt of the request for hearing, the department shall conduct a hearing on the RCL determination. The standard of proof shall be the preponderance of the evidence and the burden of proof shall be on the department. The hearing officer shall issue the proposed decision within 45 days of the close of the evidentiary record. The director shall adopt, reject, or modify the proposed decision, or refer the matter back to the hearing officer for additional evidence or findings within 100 days of issuance of the proposed decision. If the director takes no action on the proposed decision within the prescribed time, the proposed decision shall take effect by operation of law.

(2) Group home programs that fail to maintain at least the level of care and services associated with the RCL upon which their rate was established shall inform the department. The department shall develop regulations specifying procedures to be applied when a group home fails to maintain the level of services projected, including, but not limited to, rate reduction and recovery of overpayments.

(3) The department shall not reduce the rate, establish an overpayment, or take other actions pursuant to paragraph (2) for any period that a group home program maintains the level of care and services associated with the RCL for children actually residing in the facility. Determinations of levels of care and services shall be made in the same way as modifications of overpayments are made pursuant to paragraph (2) of subdivision (b) of Section 11466.2.

(4) A group home program that substantially changes its staffing pattern from that reported in the group home program statement shall provide notification of this change to all counties that have placed children currently in care. This notification shall be provided whether or not the RCL for the program may change as a result of the change in staffing pattern.

(f) (1) The standardized schedule of rates for fiscal year 2002–03 is:

Rate Classification Level	Point Ranges	FY 2002–03 Standard Rate
1	Under 60	$1,454
2	60–89	1,835
3	90–119	2,210
4	120–149	2,589
5	150–179	2,966
6	180–209	3,344
7	210–239	3,723
8	240–269	4,102

9	270–299	4,479
10	300–329	4,858
11	330–359	5,234
12	360–389	5,613
13	390–419	5,994
14	420 & Up	6,371

(2) (A) For group home programs that receive AFDC-FC payments for services performed during the 2002–03 fiscal year, the adjusted RCL point ranges below shall be used in performing program audits and in determining any resulting rate reduction, overpayment assessment, or other actions pursuant to paragraph (2) of subdivision (e):

Rate Classification Level	Adjusted Point Ranges for 2002–03
1	Under 54
2	54–81
3	82–110
4	111–138
5	139–167
6	168–195
7	196–224
8	225–253
9	254–281
10	282–310
11	311–338
12	339–367
13	368–395
14	396 & Up

(B) Notwithstanding subparagraph (A), foster care providers operating group homes during the 2002–03 fiscal year shall remain responsible for ensuring the health and safety of the children placed in their programs in accordance with existing applicable provisions of the Health and Safety Code and community care licensing regulations, as contained in Title 22 of the Code of California Regulations.

(C) Subparagraph (A) shall not apply to program audits of group home programs with provisional rates established pursuant to paragraph (1) of subdivision (e). For those program audits, the RCL point ranges in paragraph (1) shall be used.

(g) (1) (A) For the 1999–2000 fiscal year, the standardized rate for each RCL shall be adjusted by an amount equal to the California Necessities Index computed pursuant to the methodology described in Section 11453. The resultant amounts shall constitute the new standardized schedule of rates, subject to further adjustment pursuant to subparagraph (B).

(B) In addition to the adjustment in subparagraph (A), commencing January 1, 2000, the standardized rate for each RCL shall be increased by 2.36 percent, rounded to the nearest dollar. The resultant amounts shall constitute the new standardized schedule of rates.

(2) Beginning with the 2000–01 fiscal year, the standardized schedule of rates shall be adjusted annually by an amount equal to the CNI computed pursuant to Section 11453, subject to the availability of funds. The resultant amounts shall constitute the new standardized schedule of rates.

(3) Effective January 1, 2001, the amount included in the standard rate for each Rate Classification Level for the salaries, wages, and benefits for staff providing child care and supervision or performing social work activities, or both, shall be increased by 10 percent. This additional funding shall be used by group home programs solely to supplement staffing, salaries, wages, and benefit levels of staff specified in this paragraph. The standard rate for each RCL shall be recomputed using this adjusted amount and the resultant rates shall constitute the new standardized schedule of rates. The department may require a group home receiving this additional funding to certify that the funding was utilized in accordance with the provisions of this section.

(h) The standardized schedule of rates pursuant to subdivisions (f) and (g) shall be implemented as follows:

(1) Any group home program which received an AFDC-FC rate in the prior fiscal year at or above the standard rate for the RCL in the current fiscal year shall continue to receive that rate.

(2) Any group home program which received an AFDC-FC rate in the prior fiscal year below the standard rate for the RCL in the current fiscal year shall receive the RCL rate for the current year.

(i) (1) The department shall not establish a rate for a new program of a new or existing provider unless the provider submits a recommendation from the host county, the primary placing county, or a regional consortium of counties that the program is needed in that county; that the provider is capable of effectively and efficiently operating the program; and that the provider is willing and able to accept AFDC-FC children for placement who are determined by the placing agency to need the level of care and services that will be provided by the program.

(2) The department shall encourage the establishment of consortia of county placing agencies on a regional basis for the purpose of making decisions and recommendations about the need for, and use of, group home programs and other foster care providers within the regions.

(3) The department shall annually conduct a county-by-county survey to determine the unmet placement needs of children placed pursuant to Section 300 and Section 601 or 602, and shall publish its findings by November 1 of each year.

(j) The department shall develop regulations specifying ratesetting procedures for program expansions, reductions, or modifications, including increases or decreases in licensed capacity, or increases or decreases in level of care or services.

(k) (1) For the purpose of this subdivision, ''program change'' means any alteration to an existing group home program planned by a provider that will increase the RCL or AFDC-FC rate. An increase in the licensed capacity or other alteration to an existing group home program that does not increase the RCL or AFDC-FC rate shall not constitute a program change.

(2) For the 1998–99, 1999–2000, and 2000–01 fiscal years, the rate for a group home program shall not increase, as the result of a program change, from the rate established for the program effective July 1, 2000, and as adjusted pursuant to subparagraph (B) of paragraph (1) of subdivision (g), except as provided in paragraph (3).

(3) (A) For the 1998–99, 1999–2000, and 2000–01 fiscal years, the department shall not establish a rate for a new program of a new or existing provider or approve a program change for an existing provider that either increases the program's RCL or AFDC-FC rate, or increases the licensed capacity of the program as a result of decreases in another program with a lower RCL or lower AFDC-FC rate that is operated by that provider, unless both of the conditions specified in this paragraph are met.

(i) The licensee obtains a letter of recommendation from the host county, primary placing county, or regional consortium of counties regarding the proposed program change or new program.

(ii) The county determines that there is no increased cost to the General Fund.

(B) Notwithstanding subparagraph (A), the department may grant a request for a new program or program change, not to exceed 25 beds, statewide, if (i) the licensee obtains a letter of recommendation from the host county, primary placing county, or regional consortium of counties regarding the proposed program change or new program, and (ii) the new program or program change will result in a reduction of referrals to state hospitals during the 1998–99 fiscal year.

(*l*) General unrestricted or undesignated private charitable donations and contributions made to charitable or nonprofit organizations shall not be deducted from the cost of providing services pursuant to this section. The donations and contributions shall not be considered in any determination of maximum expenditures made by the department.

(m) The department shall, by October 1 each year, commencing October 1, 1992, provide the Joint Legislative Budget Committee with a list of any new departmental requirements established during the previous fiscal year concerning the operation of group homes, and of any unusual, industrywide increase in costs associated with the provision of group care which may have significant fiscal impact on providers of group homes care. The committee may, in fiscal year 1993–94 and beyond, use the list to determine whether an appropriation for rate adjustments is needed in the subsequent fiscal year.

SEC. 44. Section 11466.21 of the Welfare and Institutions Code is amended to read:

11466.21. (a) In accordance with subdivision (b), as a condition to receive an AFDC-FC rate for a group home program or a foster family agency program that provides treatment services, the following shall apply:

(1) Any provider who receives three hundred thousand dollars ($300,000) or more in combined federal funds shall arrange to have a financial audit conducted on an annual basis, and shall submit the annual financial audit to the department in accordance with regulations adopted by the department.

(2) Any provider who receives less than three hundred thousand dollars ($300,000) in combined federal funds shall submit to the department a financial audit on its most recent fiscal period at least once every three years. The department shall provide timely notice to the providers of the date that submission of the financial audit is required. That date of submission of the financial audit shall be no later than six months from the close of the provider's most recent fiscal period.

(3) The scope of the financial audit shall include all of the programs and activities operated by the provider and shall not be limited to those funded in whole or in part by the AFDC-FC program. The financial audits shall include, but not be limited to, an evaluation of the accounting and control systems of the provider.

(4) The provider shall have its financial audit conducted by certified public accountants or by state-licensed public accountants who have no direct or indirect relationship with the functions or activities being audited, or with the provider, its board of directors, officers, or staff.

(5) The provider shall have its financial audits conducted in accordance with Government Auditing Standards issued by the Comptroller General of the United States and in compliance with

generally accepted accounting principles applicable to private entities organized and operated on a nonprofit basis.

(6) (A) Each provider shall have the flexibility to define the calendar months included in its fiscal year.

(B) A provider may change the definition of its fiscal year. However, the financial audit conducted following the change shall cover all of the months since the last audit, even though this may cover a period that exceeds 12 months.

(b) (1) In accordance with subdivision (a), as a condition to receive an AFDC-FC rate that becomes effective on or after July 1, 2000, a provider shall submit a copy of its most recent financial audit report, except as provided in paragraph (3).

(2) The department shall terminate the rate of a provider who fails to submit a copy of its most recent financial audit pursuant to subdivision (a). A terminated rate shall only be reinstated upon the provider's submission of an acceptable financial audit.

(3) Effective July 1, 2000, a new provider that has been incorporated for fewer than 12 calendar months shall not be required to submit a copy of a financial audit to receive an AFDC-FC rate for a new program. The financial audit shall be conducted on the provider's next full fiscal year of operation. The provider shall submit the financial audit to the department in accordance with subdivision (a).

(c) The department shall develop regulations establishing a process for group home providers who receive less than three hundred thousand dollars ($300,000) in combined federal funds and have a total licensed capacity of 12 or fewer persons, a foster family agency provider who receives less than three hundred thousand dollars ($300,000) in combined federal funds to apply for and receive financial assistance for the conduct of the financial audit submitted once every three years. In recognition of the fact that the costs of a financial audit will be higher for small providers, relative to their revenues and expenditures, than they will be for larger providers, financial assistance shall be provided on a sliding scale basis to offset the costs of the audit. An eligible provider may receive up to two thousand five hundred dollars ($2,500), or one-half of the actual costs of the financial audit, whichever is less, subject to the availability of funds for that purpose.

(d) The department shall implement this section through the adoption of emergency regulations.

SEC. 45. Section 11486 of the Welfare and Institutions Code is amended to read:

11486. (a) The needs of any individual who is a member of a family applying for, or receiving, aid under this chapter shall not be taken into account in making the determination under Section 11450 with respect to his or her family beginning on the date, or at any time thereafter, the

individual is found in state or federal court or pursuant to an administrative hearing decision, including any determination made on the basis of a plea of guilty or nolo contendere, to have committed any of the following acts:

(1) Making a fraudulent statement or representation with respect to the place of residence of the individual in order to receive assistance simultaneously from two or more states or counties.

(2) Submitting documents for nonexistent children, or submitting false documents for the purpose of showing ineligible children to be eligible for aid.

(3) When there has been a receipt of cash benefits that exceeds ten thousand dollars ($10,000) as a result of intentionally and willfully doing any of the following acts for the purpose of establishing or maintaining the family's eligibility for aid or increasing or preventing a reduction in the amount of aid:

(A) Making a false or misleading statement or misrepresenting, concealing, or withholding facts.

(B) Committing any act intended to mislead, misrepresent, conceal, or withhold facts or propound a falsity.

(b) The needs of any individual who is a member of a family applying for, or receiving, aid under this chapter shall not be taken into account in making the determination under Section 11450 with respect to his or her family for the following periods beginning on the date or any time thereafter the individual is convicted of a felony in state or federal court, including any determination made on the basis of a plea of guilty or nolo contendere, for committing fraud in the receipt or attempted receipt of aid:

(1) For two years, if the amount of aid is less than two thousand dollars ($2,000).

(2) For five years, if the amount of aid is two thousand dollars ($2,000) or more but is less than five thousand dollars ($5,000).

(3) Permanently, if the amount of aid is five thousand dollars ($5,000) or more.

(c) (1) Except as provided in subdivisions (a) and (b), the needs of any individual who is a member of a family applying for, or receiving, aid under this chapter to whom paragraph (2) applies shall not be taken into account in making the determination under Section 11450 with respect to his or her family for the following periods:

(A) For a period of six months upon the first occasion of any offense referred to in paragraph (2).

(B) For a period of 12 months upon the second occasion of any of those offenses referred to in paragraph (2).

(C) Permanently, upon the third occasion of any offense referred to in subdivision (b) and paragraph (2).

(2) Except as provided in subdivisions (a), (b) and (d), paragraph (1) shall apply to any individual who is found by a federal or state court, or pursuant to a special administrative hearing meeting the requirements of regulations adopted by the United States Secretary of Health and Human Services, including any determination made on the basis of a plea of guilty or nolo contendere, to have done any of the following acts for the purpose of establishing or maintaining the family's eligibility for aid or increasing, or preventing a reduction in, the amount of that aid:

(A) Making a false or misleading statement or misrepresenting, concealing, or withholding facts.

(B) Committing any act intended to mislead, misrepresent, conceal, or withhold facts or propound a falsity.

(d) (1) Except as provided in subdivisions (a) and (b), and notwithstanding subdivision (c), the needs of any individual who is a member of a family applying for, or receiving, aid under this chapter to whom paragraph (2) applies shall not be taken into account in making the determination under Section 11450 with respect to his or her family for the following periods:

(A) For a period of two years upon the first occasion of any offense referred to in paragraph (2).

(B) For a period of four years upon the second occasion of any offense referred to in paragraph (2).

(C) Permanently, upon the third occasion of any offense referred to in subdivision (b) and paragraph (2).

(2) Paragraph (1) shall apply to any individual who is found by a federal or state court, or pursuant to a special administrative hearing meeting the requirements of regulations adopted by the United States Secretary of Health and Human Services, including any determination made on the basis of a plea of guilty or nolo contendere, to have submitted more than one application for the same type of aid for the same period of time, for the purpose of receiving more than one grant of aid in order to establish or maintain the family's eligibility for aid or increasing, or preventing a reduction in, the amount of that aid.

(e) Proceedings against any individual alleged to have committed an offense described in subdivision (c) or (d) may be held either by hearing, pursuant to Section 10950 and in conformity with the regulations of the United States Secretary of Health and Human Services, if appropriate, or by referring the matter to the appropriate authorities for civil or criminal action in court.

(f) The department shall coordinate any action taken under this section with any corresponding actions being taken under the Food Stamp Program in any case where the factual issues involved arise from the same or related circumstances.

(g) Any period for which sanctions are imposed under this section shall remain in effect, without possibility of administrative stay, unless and until the findings upon which the sanctions were imposed are subsequently reversed by a court of appropriate jurisdiction, but in no event shall the duration of the period for which the sanctions are imposed be subject to review.

(h) Sanctions imposed under this section shall be in addition to, and not in substitution for, any other sanctions which may be provided for by law with respect to the offenses for which the sanctions are imposed.

(i) The department shall adopt regulations to ensure that any investigations made under this chapter are conducted throughout the state in such a manner as to protect the confidentiality of the current or former working recipient.

(j) Each county shall receive an amount equal to 12.5 percent of the actual amount of aid under this chapter repaid or recovered by a county, as determined by the Director of the Department of Finance resulting from the detection of fraud.

SEC. 46. Section 12201 of the Welfare and Institutions Code is amended to read:

12201. (a) Except as provided in subdivision (d), the payment schedules set forth in Section 12200 shall be adjusted annually to reflect any increases or decreases in the cost of living. Except as provided in subdivision (e), these adjustments shall become effective January 1 of each year. The cost-of-living adjustment shall be based on the changes in the California Necessities Index, which as used in this section shall be the weighted average of changes for food, clothing, fuel, utilities, rent, and transportation for low-income consumers. The computation of annual adjustments in the California Necessities Index shall be made in accordance with the following steps:

(1) The base period expenditure amounts for each expenditure category within the California Necessities Index used to compute the annual grant adjustment are:

Food	$ 3,027
Clothing (apparel and upkeep)	406
Fuel and other utilities	529
Rent, residential	4,883
Transportation	1,757
Total	$10,602

(2) Based on the appropriate components of the Consumer Price Index for All Urban Consumers, as published by the United States Department of Labor, Bureau of Labor Statistics, the percentage change

shall be determined for the 12-month period which ends 12 months prior to the January in which the cost-of-living adjustment will take effect, for each expenditure category specified in paragraph (1) within the following geographical areas: Los Angeles-Long Beach-Anaheim, San Francisco-Oakland, San Diego, and, to the extent statistically valid information is available from the Bureau of Labor Statistics, additional geographical areas within the state which include not less than 80 percent of recipients of aid under this chapter.

(3) Calculate a weighted percentage change for each of the expenditure categories specified in subdivision (a) using the applicable weighting factors for each area used by the State Department of Industrial Relations to calculate the California Consumer Price Index (CCPI).

(4) Calculate a category adjustment factor for each expenditure category in paragraph (1) by (1) adding 100 to the applicable weighted percentage change as determined in paragraph (2) and (2) dividing the sum by 100.

(5) Determine the expenditure amounts for the current year by multiplying each expenditure amount determined for the prior year by the applicable category adjustment factor determined in paragraph (4).

(6) Determine the overall adjustment factor by dividing (1) the sum of the expenditure amounts as determined in paragraph (4) for the current year by (2) the sum of the expenditure amounts as determined in paragraph (4) for the prior year.

(b) The overall adjustment factor determined by the preceding computational steps shall be multiplied by the payment schedules established pursuant to Section 12200 as are in effect during the month of December preceding the calendar year in which the adjustments are to occur, and the product rounded to the nearest dollar. The resultant amounts shall constitute the new schedules for the categories given under subdivisions (a), (b), (c), (d), (e), (f), and (g) of Section 12200, and shall be filed with the Secretary of State. The amount as set forth in subdivision (h) of Section 12200 shall be adjusted annually pursuant to this section in the event that the secretary agrees to administer payment under that subdivision. The payment schedule for subdivision (i) of Section 12200 shall be computed as specified, based on the new payment schedules for subdivisions (a), (b), (c), and (d) of Section 12200.

(c) The department shall adjust any amounts of aid under this chapter to insure that the minimum level required by the Social Security Act in order to maintain eligibility for funds under Title XIX of that act is met.

(d) (1) No adjustment shall be made under this section for the 1991, 1992, 1993, 1994, 1995, 1996, 1997, and 1998 calendar years to reflect any change in the cost of living. Elimination of the cost-of-living adjustment pursuant to this paragraph shall satisfy the requirements of

Section 12201.05, and no further reduction shall be made pursuant to that section.

(2) Any cost-of-living adjustment granted under this section for any calendar year shall not include adjustments for any calendar year in which the cost of living was suspended pursuant to paragraph (1).

(e) For the 2003 calendar year, the adjustment required by this section shall become effective June 1, 2003.

SEC. 48. Section 14021.6 of the Welfare and Institutions Code is amended to read:

14021.6. (a) For the fiscal years prior to fiscal year 2004–05, and subject to the requirements of federal law, the maximum allowable rates for the Medi-Cal Drug Treatment Program shall be determined by computing the median rate from available cost data by modality from the fiscal year that is two years prior to the year for which the rate is being established.

(b) (1) For the fiscal year 2007–08, and subsequent fiscal years, and subject to the requirements of federal law, the maximum allowable rates for the Medi-Cal Drug Treatment Program shall be determined by computing the median rate from the most recently completed cost reports, by specific service codes that are consistent with the federal Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. Sec. 300gg).

(2) For the fiscal years 2005–06 and 2006–07, if the State Department of Health Services and the Department of Alcohol and Drug Programs determine that reasonably reliable and complete cost report data are available, the methodology specified in this subdivision shall be applied to either or both of those years. If reasonably reliable and complete cost report data are not available, the State Department of Health Services and the Department of Alcohol and Drug Programs shall establish rates for either or both of those years based upon the usual, customary, and reasonable charge for the services to be provided, as these two departments may determine in their discretion. This subdivision is not intended to modify subdivision (k) of Section 11758.46 of the Health and Safety Code, that requires certain providers to submit performance reports.

(c) Notwithstanding subdivision (a), for the 1996–97 fiscal year, the rates for nonperinatal outpatient methadone maintenance services shall be set at the rate established for the 1995–96 fiscal year.

(d) Notwithstanding subdivision (a), the maximum allowable rate for group outpatient drug free services shall be set on a per person basis. A group shall consist of a minimum of four and a maximum of 10 individuals, at least one of which shall be a Medi-Cal eligible beneficiary.

(e) The department shall develop individual and group rates for extensive counseling for outpatient drug free treatment, based on a 50-minute individual or a 90-minute group hour, not to exceed the total rate established for subdivision (d).

(f) The department may adopt regulations as necessary to implement subdivisions (a), (b), and (c), or to implement cost containment procedures. These regulations may be adopted as emergency regulations in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. The adoption of these emergency regulations shall be deemed an emergency necessary for the immediate preservation of the public peace, health and safety, or general welfare.

SEC. 49. Section 14124.93 of the Welfare and Institutions Code is amended to read:

14124.93. (a) The Department of Child Support Services shall provide payments to the local child support agency of fifty dollars ($50) per case for obtaining third-party health coverage or insurance of beneficiaries, to the extent that funds are appropriated in the annual Budget Act.

(b) A county shall be eligible for a payment if the county obtains third-party health coverage or insurance for applicants or recipients of Title IV-D services not previously covered, or for whom coverage has lapsed, and the county provides all required information on a form approved by both the Department of Child Support Services and the State Department of Health Services.

SEC. 50. Section 15204.3 of the Welfare and Institutions Code is amended to read:

15204.3. (a) Beginning in the 2000–01 fiscal year, allocation of funds provided under Section 15204.2 shall be made, in the case of funds for benefits administration and employment services, based on projected county costs and subject to funds appropriated in the annual Budget Act for operating the CalWORKs program under Chapter 2 (commencing with Section 11200). By November 1, 1999, the department and the County Welfare Directors Association shall jointly develop the specific components of this budgeting methodology, including a process for ensuring that costs funded under the methodology are reasonable and consistent with the requirements of this chapter. It is the intent of the Legislature that limited-term housing assistance be considered as part of the cost-based allocation methodology, where appropriate.

(b) Beginning in the 2002–03 fiscal year, funding in support of all components of the CalWORKs program and all state programs funded with federal Temporary Assistance for Needy Families funding shall be based on a budgeting methodology developed by the department in consultation with the counties, the California State Association of

Counties, the County Welfare Directors Association, and other stakeholders, and subject to funds appropriated in the annual Budget Act for administration of the CalWORKs program under Chapter 2 (commencing with Section 11200). In developing the new methodology, the department shall consider, among other factors, the availability of state and federal funds, projected caseload, and the need for basic supportive and employment services. The department shall submit the new methodology to the policy and fiscal committees of both houses of the Legislature by November 15, 2001.

(c) Beginning in the 2002–03 fiscal year, any adjustments to the county CalWORKs single allocations, determined pursuant to Section 15204.2, for funding overlaps pertaining to both United States Department of Labor Welfare-to-Work Grant funds and state matching funds, shall reflect the most recent available data regarding the expenditures of those funds that offset the funds that counties would have otherwise spent from the CalWORKs single allocations.

(d) In the 1997–98 fiscal year, additional funds for welfare-to-work administration above GAIN allocation in the 1996–97 fiscal year shall be distributed among the counties with two-thirds allocated to all counties based on each county's share of adults aided under Chapter 2 (commencing with Section 11200). The remaining one-third shall be allocated among only those counties that in the prior year received an allocation per average aided adult at a level less than the statewide average, and shall be distributed among those counties so that they each receive the same overall allocation per average aided adult for welfare-to-work administration.

(e) For purposes of this section, and subject to funds appropriated in the annual Budget Act, no county shall receive less for employment services than what was received in the 1997–98 fiscal year allocation for welfare-to-work administration unless a county projects that its cost will be less than its 1997–98 fiscal year allocation for employment services.

(f) (1) In the 2001–02 fiscal year, the sum of three million five hundred eighty-seven thousand dollars ($3,587,000) in state matching funds for federal welfare-to-work block grant funds appropriated by Item 5180-101-0001 of the Budget Act of 2001 is for the purpose specified in paragraph (3).

(2) (A) No later than 30 days after the receipt of fourth-quarter claims submitted by counties in accordance with this section, the department shall determine the amount of unspent funds appropriated for the 2000–01 fiscal year for the CalWORKs single allocation and the CalWORKs mental health and substance abuse allocations. The department shall also determine the amount of those funds that were appropriated from the General Fund and the amount that was appropriated from the Federal Trust Fund.

(B) The amount determined pursuant to subparagraph (A) to have been appropriated from the General Fund shall be reappropriated to Item 5180-101-0001 of the Budget Act of 2001.

(C) The amount determined pursuant to subparagraph (A) to have been appropriated from the Federal Trust Fund shall be reappropriated to Item 5180-101-0890 of the Budget Act of 2001.

(3) No later than 60 days after the receipt of fourth-quarter claims, all funds appropriated to Item 5180-101-0001 and Item 5180-101-0890 of the Budget Act of 2001 pursuant to this subdivision shall be allocated to the counties that are under equity with respect to the single allocation (excluding child care and Cal-Learn) for the 2001–02 fiscal year, according to a methodology developed by the department, in consultation with the County Welfare Directors Association.

(g) For the 2002–03 fiscal year only, the single allocation made pursuant to Section 15204.2 shall include an adjustment in the amount of one hundred twenty-eight million dollars ($128,000,000), from funds appropriated in Item 5180-101-0890, Schedule 16.30 (b) of Section 2.00 of the Budget Act of 2002. The appropriated funds shall be allocated to counties for the 2002–03 fiscal year according to a methodology determined by the department in consultation with the County Welfare Directors Association.

SEC. 51. Section 15763 of the Welfare and Institutions Code is amended to read:

15763. (a) Each county shall establish an emergency response adult protective services program that shall provide in-person response, 24 hours per day, seven days per week, to reports of abuse of an elder or a dependent adult, for the purpose of providing immediate intake or intervention, or both, to new reports involving immediate life threats and to crises in existing cases. The program shall include policies and procedures to accomplish all of the following:

(1) Provision of case management services that include investigation of the protection issues, assessment of the person's concerns, needs, strengths, problems, and limitations, stabilization and linking with community services, and development of a service plan to alleviate identified problems utilizing counseling, monitoring, followup, and reassessment.

(2) Provisions for emergency shelter or in-home protection to guarantee a safe place for the elder or dependent adult to stay until the dangers at home can be resolved.

(3) Establishment of multidisciplinary teams to develop interagency treatment strategies, to ensure maximum coordination with existing community resources, to ensure maximum access on behalf of elders and dependent adults, and to avoid duplication of efforts.

(b) (1) A county shall respond immediately to any report of imminent danger to an elder or dependent adult residing in other than a long-term care facility, as defined in Section 9701 of the Welfare and Institutions Code, or a residential facility, as defined in Section 1502 of the Health and Safety Code. For reports involving persons residing in a long-term care facility or a residential care facility, the county shall report to the local long-term care ombudsman program. Adult protective services staff shall consult, coordinate, and support efforts of the ombudsman program to protect vulnerable residents. Except as specified in paragraph (2), the county shall respond to all other reports of danger to an elder or dependent adult in other than a long-term care facility or residential care facility within 10 calendar days or as soon as practicably possible.

(2) An immediate or 10-day in-person response is not required when the county, based upon an evaluation of risk, determines and documents that the elder or dependent adult is not in imminent danger and that an immediate or 10-day in-person response is not necessary to protect the health or safety of the elder or dependent adult.

(3) The State Department of Social Services, in consultation with the County Welfare Directors Association, shall develop requirements for implementation of paragraph (2), including, but not limited to, guidelines for determining appropriate application of this section and any applicable documentation requirements.

(4) 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 the requirements developed pursuant to paragraph (3) by means of all-county letters or similar instructions prior to adopting regulations for that purpose. 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.

(c) A county shall provide case management services to elders and dependent adults who are determined to be in need of adult protective services for the purpose of bringing about changes in the lives of victims and to provide a safety net to enable victims to protect themselves in the future. Case management services shall include the following, to the extent services are appropriate for the individual:

(1) Investigation of the protection issues, including, but not limited to, social, medical, environmental, physical, emotional, and developmental.

(2) Assessment of the person's concerns and needs on whom the report has been made and the concerns and needs of other members of the family and household.

(3) Analysis of problems and strengths.

(4) Establishment of a service plan for each person on whom the report has been made to alleviate the identified problems.

(5) Client input and acceptance of proposed service plans.

(6) Counseling for clients and significant others to alleviate the identified problems and to implement the service plan.

(7) Stabilizing and linking with community services.

(8) Monitoring and followup.

(9) Reassessments, as appropriate.

(d) To the extent resources are available, each county shall provide emergency shelter in the form of a safe haven or in-home protection for victims. Shelter and care appropriate to the needs of the victim shall be provided for frail and disabled victims who are in need of assistance with activities of daily living.

(e) Each county shall designate an adult protective services agency to establish and maintain multidisciplinary teams including, but not limited to, adult protective services, law enforcement, home health care agencies, hospitals, adult protective services staff, the public guardian, private community service agencies, public health agencies, and mental health agencies for the purpose of providing interagency treatment strategies.

(f) Each county shall provide tangible support services, to the extent resources are available, which may include, but not be limited to, emergency food, clothing, repair or replacement of essential appliances, plumbing and electrical repair, blankets, linens, and other household goods, advocacy with utility companies, and emergency response units.

SEC. 52. Section 16011 of the Welfare and Institutions Code is amended to read:

16011. (a) Subject to the conditions prescribed by this section, Los Angeles County may pursue the development and evaluation of a pilot Internet-based health and education passport system. The system shall be known as the Passport System. The Passport System shall collect and maintain health and education records for foster children under the supervision of the county social services or probation department, as required by Section 16010. The Passport System shall initially be conducted as a limited pilot project in a subset of Los Angeles County, and upon successful evaluation, may be expanded statewide.

(1) Los Angeles County shall be responsible for the planning, development, and implementation of the Passport System. Los Angeles County is responsible for the development of the advance planning document (APD) as prescribed by federal regulations, requesting funding consistent with the child welfare services program. The APD shall include, but not be limited to, the design of an interface between the web-based Passport System and the Child Welfare Services/Case Management System (CWS/CMS) so that information entered into the

Passport System shall automatically and permanently reside in the CWS/CMS. In addition, the APD shall include the scope of the pilot project, the evaluation plan pursuant to subdivisions (b) and (d), and the county shall address a plan for compliance with pertinent provisions in state and federal law requiring that privacy of confidential information be maintained.

(2) The department shall review and, upon approval by the appropriate state agencies, shall transmit the APD to the federal Department of Health and Human Services. The department shall facilitate assistance as appropriate to gain federal approval of the APD. Implementation of the pilot system shall be contingent upon federal approval of the APD and of the request for federal funding consistent with the child welfare services program. It shall also be contingent upon assurance by the United States Secretary of Health and Human Services that the federal funding for the CWS/CMS shall not be adversely impacted by the development and implementation of the Passport System. If the department is unable to gain federal approval of the pilot project by January 1, 2004, authorization for the pilot project established by this section shall cease.

(3) The Passport System shall provide real-time access to health, mental health, and educational information by health and mental health care providers, educators, licensed or approved foster care givers, and local agency staff in order to improve the accuracy and reliability of information necessary to ensure receipt of appropriate services for children in foster care, to improve health and educational outcomes, and to reduce and eliminate the risk of inadequate treatment by service providers, multiple immunizations, other severe health and education problems, and death.

(4) The Passport System shall meet all the operational and administrative needs of local participating agencies; be scalable and flexible to interface with and integrate data from multiple Los Angeles County and other county departments and state agencies that provide services to children, using data matching algorithms that provide a high level of confidence and reliability; maximize the use and availability of information in a secured and reliable environment; allow relevant county staff, health, mental health, education providers, and licensed or approved foster care givers to update or view appropriate data through a web-enabled application via the Internet; contain fire walls and safeguards to ensure that only authorized persons inquire and update only those cases which they have been authorized to access; and to ensure the integrity and confidentiality of the system.

(b) Prior to commencement of the pilot project, Los Angeles County, in consultation with the department, shall develop a pilot evaluation plan subject to approval by the department and the United States Secretary of

Health and Human Services. The plan shall include, but is not limited to, identification of measurable objectives, and benefits that the pilot project is expected to achieve, the methodology, and plan criteria for evaluating the pilot project.

(c) The pilot plan shall include a strategy to incentivize health, mental health, and educational providers servicing foster children to utilize and update the Internet-based system.

(d) Implementation of the interface between the Internet-based Passport System and the CWS/CMS shall be contingent upon approval of federal reimbursement consistent with the child welfare services program. Funding shall be subject to the sharing ratios that apply to the administration of child welfare services programs. Any funds appropriated for this purpose not expended in the 2001–02 fiscal year shall be available for the purposes of this section as expenditure in subsequent years. After one year of operation of the pilot project, Los Angeles County shall complete a pilot evaluation as described in the pilot evaluation plan. The results of the evaluation shall be provided to the chairpersons of the fiscal and policy committees of each house of the Legislature, the Chairperson of the Joint Legislative Budget Committee, and the Department of Finance.

SEC. 53. Section 16131 of the Welfare and Institutions Code is amended to read:

16131. It is the intent of the Legislature to conform state statutes to recently enacted federal legislation, the Adoption and Safe Families Act of 1997 (Public Law 105-89), and to reinvest any incentive payments received through implementation of the federal act into the child welfare system in order to provide adoption services.

SEC. 54. Section 18910 of the Welfare and Institutions Code is repealed.

SEC. 55. Section 18910 is added to the Welfare and Institutions Code, to read:

18910. (a) To the extent permitted by federal law, regulations, waivers, and directives, the department shall implement the prospective budgeting, quarterly reporting system to conform to Food Stamp Program requirements to the provisions of Sections 11265.1, 11265.2, and 11265.3, and related provisions regarding the Food Stamp Program, in a cost-effective manner that promotes compatibility between the CalWORKs program and the Food Stamp Program, and minimizes the potential for payment errors. If a federal food stamp waiver is not available to conform the Food Stamp Program to one or more of these CalWORKs provisions, the department shall choose the food stamp provisions most compatible with CalWORKs provisions.

(b) The department shall seek all necessary waivers from the United States Department of Agriculture to implement subdivision (a) to

conform Food Stamp Program requirements to the prospectively budgeted, quarterly reporting system provided in Sections 11265.1, 11265.2, and 11265.3, and related provisions.

SEC. 56. Section 19355.5 of the Welfare and Institutions Code is amended to read:

19355.5. (a) Notwithstanding any other provision of law, effective July 1, 2000, the twenty-eight dollar and thirty-three cent ($28.33) hourly rate for supported employment services established pursuant to paragraph (2) of subdivision (b) of Section 19356.6 shall be reduced by the percentage necessary to ensure that projected total General Fund expenditures and reimbursements for habilitation services and vocational rehabilitation supported employment services, including services pursuant to paragraph (2) of, and clauses (i) to (iii), inclusive, of subparagraph (B) of paragraph (2) of, subdivision (b) of Section 19356.6, and, for the habilitation services program only, ancillary services, based on Budget Act caseload projections, do not exceed the General Fund and reimbursement appropriations for these services in the annual Budget Act, exclusive of increases in job coach hours due to unanticipated increases in caseload or the average client workday. This reduction shall not be implemented sooner than 30 days after notification in writing of the necessity for the reduction to the appropriate fiscal committees and policy committees of the Legislature and the Chairperson of the Joint Legislative Budget Committee, or not sooner than whatever lesser time the chairperson of the joint committee, or his or her designee, may in each instance determine.

(b) The department shall annually make two projections of General Fund expenditures and reimbursements in a form and timeframe as determined by the Department of Finance.

(d) This section shall become inoperative on September 1, 2003, and as of January 1, 2004, is repealed, unless a later enacted statute that becomes operative on or before January 1, 2004, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 57. Section 19356 of the Welfare and Institutions Code is amended to read:

19356. (a) The department shall adopt regulations to establish rates for work-activity program services subject to the approval of the Department of Finance. The regulations shall provide for an equitable ratesetting procedure in which each specific allowable service, activity, and provider administrative cost comprising an overall habilitation service, as determined by the department, reflects the reasonable cost of service. Reasonable costs shall be determined biennially by the department, subject to audit at the discretion of the department.

(b) It is the intent of the Legislature that, commencing July 1, 1996, the department establish rates for both habilitation services and

vocational rehabilitation work-activity programs pursuant to subdivision (a). Nothing in this subdivision shall preclude the subsequent amendment or adoption of regulations pursuant to subdivision (a).

(c) For the 2002–03 fiscal year, notwithstanding any other provision of law, the department shall suspend for one year the biennial rate adjustment for work-activity programs.

SEC. 58. Section 19356.5 of the Welfare and Institutions Code is amended to read:

19356.5. (a) The department may approve new work-activity programs, after confirming the need for a new work-activity program, determining the capacity of a new work-activity program to deliver effective services, and assessing the ability of the program to comply with accreditation requirements of the Habilitation Services Program, when applicable.

(b) Work-activity programs or program components that receive the department's approval to provide supported employment services shall receive rates in accordance with Section 19356.6, except new work-activity programs, to which subdivision (c) applies.

(c) Any new work-activity program that receives the department's approval shall receive the statewide average rate, as determined by the department. As soon as the new work-activity facility has a historical period of not less than three months that is representative of the cost per consumer, as determined by the department, the department shall set the rate in accordance with Section 19356.

(d) Notwithstanding Section 19355, the department may purchase services from new work-activity programs or program components, even though the program or program component is not yet accredited by the Commission on Accreditation of Rehabilitation Facilities if all of the following apply:

(1) The department can verify that the program or program component is in compliance with accreditation standards adopted by the department.

(2) (A) The program or program component commits, in writing, to apply for accreditation by the Commission on Accreditation of Rehabilitation Facilities within three years of the purchase of the services by the Habilitation Services Program.

(B) The commission shall accredit a program or program component within four years after the program or program component has applied pursuant to subparagraph (A).

SEC. 59. Section 19356.6 of the Welfare and Institutions Code is amended to read:

19356.6. (a) The definitions contained in this subdivision shall govern the construction of this section, with respect to services provided

through the Habilitation Services Program, and unless the context requires otherwise, the following terms shall have the following meanings:

(1) ''Supported employment'' means paid work that is integrated in the community for individuals with developmental disabilities whose vocational disability is so severe that they would be unable to achieve this employment without specialized services and would not be able to retain this employment without an appropriate level of ongoing postemployment support services.

(2) ''Integrated work'' means the engagement of an employee with a disability in work in a setting typically found in the community in which individuals interact with nondisabled individuals other than those who are providing services to those individuals, to the same extent that nondisabled individuals in comparable positions interact with other persons.

(3) ''Supported employment placement'' means the employment of an individual with a developmental disability by an employer in the community, directly or through contract with a supported employment program, and the provision of supported employment services including the provision of ongoing postemployment services necessary for the individual to retain employment. Services for those individuals receiving individualized services from a supported employment program shall decrease as the individual adjusts to his or her employment and the employer assumes many of those functions.

(4) ''Allowable supported employment services'' means the services approved in the individual habilitation component and provided, to the extent allowed by the Habilitation Services Program for the purpose of achieving supported employment as an outcome for individuals with developmental disabilities, which may include any of the following:

(A) Program staff time spent conducting job analysis of supported employment opportunities for a specific consumer.

(B) Program staff time spent in the direct supervision or training of a consumer or consumers while they engage in integrated work unless other arrangements for consumer supervision, such as employer supervision reimbursed by the supported employment program, are approved by the Habilitation Services Program.

(C) Training occurring in the community, in adaptive functional and social skills necessary to ensure job adjustment and retention such as social skills, money management, and independent travel.

(D) Counseling with a consumer's significant others to ensure support of a consumer in job adjustment.

(E) Advocacy or intervention on behalf of a consumer to resolve problems affecting the consumer's work adjustment or retention.

(F) Job development to the extent authorized by the Habilitation Services Program.

(G) Ongoing postemployment support services needed to ensure the consumer's retention of the job.

(5) ''Group services'' means job coach-supported employment services in a group supported employment placement at a job coach-to-client ratio of not less than one-to-four nor more than one-to-eight where a minimum of four clients are department-funded. Group services may be provided on or after July 1, 2002, in a group at a job coach-to-client ratio of one-to-three, where all three individuals in the group are department-funded supported employment clients, only if the group was established and began working prior to July 1, 2002, but those group services shall not be funded beyond June 30, 2004. The department shall work with providers to add department-funded supported employment clients to those groups on or before July 1, 2004.

(6) ''Individualized services'' means job coach and other supported employment services for department-funded clients in a supported employment placement at a job coach-to-client ratio of one-to-one.

(b) (1) The Habilitation Services Program shall set rates for supported employment services provided in accordance with this section. The Habilitation Services Program shall apply rates in accordance with this section to those work-activity programs or program components of work-activity programs approved by the department to provide supported employment and to new programs or components approved by the Habilitation Services Program to provide supported employment services. Both of these categories of programs or components shall be required to comply with the criteria set forth in subdivision (b) of Section 19356.7 to receive approval from the Habilitation Services Program.

(2) (A) The hourly rate for supported employment services provided to clients receiving individualized services shall be twenty-eight dollars and thirty-three cents ($28.33).

(B) The hourly rate for group services shall be twenty-eight dollars and thirty-three cents ($28.33) regardless of the number of clients served in the group. Clients in a group shall be scheduled to start and end work at the same time, unless an exception is approved in advance by the Habilitation Services Program. The department, in consultation with stakeholders, shall adopt regulations to define the appropriate grounds for granting these exceptions. Except as provided in paragraph (5) of subdivision (a), where the number of clients in a group supported employment placement drops to fewer than four department-funded supported employment clients, department funding for the group services in that group shall be terminated unless the program provider,

within 90 days from the date of this occurrence and consistent with Section 19356.7, does one of the following:

(i) Add one or more department-funded supported employment clients to the group.

(ii) Move the remaining clients to another existing group.

(iii) Move the remaining clients, if appropriate, to individualized placement.

(iv) Terminate services.

(C) For clients receiving group services the Habilitation Services Program may set a higher hourly rate for supported employment services, based upon the additional cost to provide ancillary services, when there is a documented and demonstrated need for a higher rate because of the nature and severity of the disabilities of the consumer, as determined by the Habilitation Services Program.

(D) In addition, fees shall be authorized for the following:

(i) A two hundred dollar ($200) fee shall be paid upon intake of a consumer into an agency's supported employment program, unless that individual has completed a supported employment intake process with that same agency within the past 12 months, in which case no fee shall be paid.

(ii) A four hundred dollar ($400) fee shall be paid upon placement of an individual in an integrated job, unless that individual is placed with another consumer or consumers assigned to the same job coach during the same hours of employment, in which case no fee shall be paid.

(iii) A four hundred dollar ($400) fee shall be paid after a 90-day retention of a consumer in a job, unless that individual has been placed with another consumer or consumers, assigned to the same job coach during the same hours of employment, in which case no fee shall be paid.

(3) These rates shall take effect July 1, 1998.

(4) It is the intent of the Legislature that, commencing July 1, 1996, the department establish rates for both habilitation services and vocational rehabilitation supported employment services pursuant to this section.

(5) For individuals receiving individualized services, services may be provided on or off the jobsite.

(6) For individuals receiving group services, ancillary services may be provided, except that all postemployment and ancillary services shall be provided at the worksite.

(c) If a consumer has been placed on a waiting list for vocational rehabilitation as a result of the department's order of selection regulations, the Habilitation Services Program may pay for those supported employment services leading to job development set forth in subparagraph (D) of paragraph (2) of subdivision (b).

(d) The Habilitation Services Program shall approve, in advance, any change in the number of clients served in a group.

(e) The department, in consultation with appropriate stakeholders, shall report to the Department of Finance and the Legislature, on or before January 1, 2001, and annually thereafter, on the implementation of supported employment rates and group size requirements pursuant to this section. The report shall include, but not be limited to, data on the sizes of client groups, the change in average group size, client outcomes, client earnings, to the extent available, and projected caseload and expenditures for the supported employment program. On or before February 1, 2003, the department shall submit to the Department of Finance and the Legislature a final report containing, at a minimum, cumulative data and outcome measures, and shall include recommendations on whether to extend the effective dates of this section and Sections 19355.5, 19355.6, and 19356.7, and recommendations for appropriate changes to those sections.

(f) If the final report required by subdivision (e) is submitted to the Department of Finance and the Legislature on or before February 1, 2003, this section shall become inoperative on September 1, 2003, and, as of January 1, 2004, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2004, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 60. Section 19356.65 of the Welfare and Institutions Code is repealed.

SEC. 61. Provision 15 is added to Item 5180-101-0001 of Section 2.00 of Chapter 324 of the Statutes of 1998 (Budget Act of 1998), to read:

15. Of the funds appropriated in Schedule (a), CalWORKs funding for counties under Schedule 16.30, no amount paid or authorized for payment to counties for incentives under the provisions of Section 10544.1 of the Welfare and Institutions Code shall be expended after June 30, 2002.

SEC. 62. Provision 17 is added to Item 5180-101-0001 of Section 2.00 of Chapter 50 of the Statutes of 1999 (Budget Act of 1999), to read:

17. Of the funds appropriated in Schedule (a), CalWORKs funding for counties under Schedule 16.30, no amount paid or authorized for payment to counties for incentives under the provisions of Section 10544.1 of the Welfare and Institutions Code shall be expended after June 30, 2002.

SEC. 63. Provision 17 is added to Item 5180-101-0001 of Section 2.00 of Chapter 106 of the Statutes of 2001 (Budget Act of 2001), to read:

17. Of the funds appropriated in Schedule (a), CalWORKs funding for counties under Schedule 16.30, no amount shall be for payment of

county incentives authorized by Section 10544.1 of the Welfare and Institutions Code.

SEC. 64. The California Workforce Investment Board shall convene a one-stop data stakeholder's group by January 1, 2003. The group shall discuss the role of one-stop centers, the types of activities taking place in one-stop centers, the appropriate data needed to monitor these activities, the types of data needed to develop public policy for one-stop centers, and the possible methods of data collection. The stakeholder's group shall include the State Department of Social Services, the Department of Rehabilitation, the Employment Development Department, the California Community Colleges, the California Department of Education, the office of the Legislative Analyst, the staff of the Joint Legislative Budget Committee and respective legislative policy committees, the Senate Office of Research, local representatives and other interested parties. The California Workforce Investment Board shall report the findings of the stakeholder's group at the hearings of the Joint Legislative Budget Committee.

SEC. 65. It is the intent of the Legislature that disability access at one-stop centers be given priority in the expenditure of federal Workforce Investment Act funding.

SEC. 66. The Employment Development Department shall convene a committee comprised of representatives of labor, employers, academia, and the public sector to conduct a study of the state's Unemployment Trust Fund to evaluate the merits of both pay-as-you-go and counter-cyclical funding methods. Based upon committee input, the Employment Development Department shall make recommendations on changes to the California unemployment insurance tax structure in order to maintain the solvency of the Unemployment Trust Fund. The study and recommendations shall be transmitted to the Legislature on or before December 31, 2003.

SEC. 67. (a) Notwithstanding the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code), until January 1, 2003, the State Department of Social Services may implement the provisions of Section 11254 of the Welfare and Institutions Code through an all county letter or similar instructions from the Director of Social Services.

(b) The department shall adopt regulations as otherwise necessary to implement Section 11254 of the Welfare and Institutions Code no later than January 1, 2003. Emergency regulations adopted for implementation of those provisions may be adopted by the director in accordance with the Administrative Procedure Act. The initial adoption of emergency regulations and one readoption of the initial regulations shall be deemed to be an emergency and necessary for immediate preservation of the public peace, health and safety, or general welfare.

Initial emergency regulations and the first readoption of those emergency regulations shall be exempt from review by the Office of Administrative Law. 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 each remain in effect for no more than 180 days.

SEC. 67.5. (a) Notwithstanding the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code), until July 1, 2003, the State Department of Social Services may implement the amendments to Sections 11323.3 and 11462 of the Welfare and Institutions Code made by this act through all county letters similar instructions from the Director of Social Services.

(b) The department shall adopt regulations as otherwise necessary to implement the amendments to Sections 11323.3 and 11462 of the Welfare and Institutions Code made by this act, no later than July 1, 2003. Emergency regulations adopted for implementation of those provisions may be adopted by the director in accordance with the Administrative Procedure Act. The initial adoption of emergency regulations and one readoption of the initial regulations shall be deemed to be an emergency and necessary for immediate preservation of the public peace, health and safety, or general welfare. Initial emergency regulations and the first readoption of those emergency regulations shall be exempt from review by the Office of Administrative Law. 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 each remain in effect for no more than 180 days.

SEC. 68. (a) During the 2002–03 fiscal year, the State Department of Social Services shall convene a working group to discuss policy changes to the CalWORKs program resulting from the state's fiscal condition, changes to federal requirements for the Temporary Assistance to Needy Families program reauthorization, and other policy changes to the CalWORKs program. The group shall meet at least three times during the fall of 2002.

(b) The State Department of Social Services, in consultation with the working group established pursuant to subdivision (a) shall produce the following documents:

(1) An assessment of the new requirements and challenges facing the CalWORKs program.

(2) A summary of policy changes suggested by various stakeholders.

(3) A summary of feedback by stakeholders on all policy proposals that have been suggested to date.

(c) The group shall include staff members of the State Department of Social Services, the California Health and Human Services Agency, the

Employment Development Department, the California Community Colleges, the office of the Legislative Analyst, the staff of the Joint Legislative Budget Committee and respective legislative policy committees, the Western Center on Law and Poverty, the County Welfare Directors Association, the California State Association of Counties, and other interested parties. The department shall report on the outcome of the working group during the budget hearings of the joint legislative budget committees.

SEC. 69. The State Department of Alcohol and Drug Programs shall apply for federal State Incentive Grant funding offered by the Substance Abuse and Mental Health Services Administration, Center for Substance Abuse Prevention. If State Incentive Grant funding is secured and permits subrecipients to include ''community coalitions,'' the department shall give special consideration to awarding funds to subrecipients that are organized as community coalitions that meet eligibility requirements. A subrecipient coalition may be part of a county or city government, a school district county office of education, or a nonprofit organization.

SEC. 70. Sections 24, 25, and 26, 28 to 33, inclusive, 36 to 41, inclusive, and 54 and 55 of this act shall become operative only as provided in a declaration of the State Director of Social Services that federal Food Stamp Program waivers have been granted and specifying a date upon which counties shall implement this act. Those provisions of this act shall be effective as to an individual recipient at the later of the date specified for implementation in the declaration of the director or the third month following that date, if the county has elected to stagger the quarterly reporting periods for recipients in the county over three months.

SEC. 71. (a) Notwithstanding the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code), until January 1, 2004, the department may implement a reporting and budgeting system, as described in this act, through an all county letter or similar instructions from the director, developed in consultation with the County Welfare Directors Association, the Western Center on Law and Poverty, and other interested stakeholders as determined by the department.

(b) The department shall adopt regulations as otherwise necessary to implement those provisions of this act no later than January 1, 2004. Emergency regulations adopted for implementation of this act may be adopted by the director in accordance with the Administrative Procedure Act. The initial adoption of emergency regulations and one readoption of the initial regulations shall be deemed to be an emergency and necessary for immediate preservation of the public peace, health and safety, or general welfare. Initial emergency regulations and the first

readoption of those emergency regulations shall be exempt from review by the Office of Administrative Law. 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.

SEC. 72. 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. 73. 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. 74. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to make the necessary statutory changes to implement the Budget Act of 2002 at the earliest possible time, it is necessary that this act take effect immediately.

CHAPTER 1023

An act to amend and supplement the Budget Act of 2002, relating to state government, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 28, 2002. Filed with Secretary of State September 28, 2002.]

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

SECTION 1. Section 3.90 is added to the Budget Act of 2002, to read:

Sec. 3.90. Notwithstanding any other provision of law, appropriations for state operations may be reduced by up to 5 percent of the amount of expenditure authority appropriated in the Budget Act of 2002 to reflect a total reduction of up to $750,000,000.

(a) The Director of Finance shall allocate the necessary reductions required by this section. The allocation of reductions shall be based on plans submitted by the agency secretaries, and if no agency secretary exists, the appropriate authority shall submit the plan.

(b) All reductions allocated by the Director of Finance pursuant to subdivision (a) shall be specific reductions in positions or items of expenditure. The plan shall categorize each reduction as to whether it eliminates resources in excess of those needed to carry out programs effectively or whether the reduction will have a programmatic effect, in which case the plan shall identify that effect.

(c) The reductions allocated by the Director of Finance shall be reflected and identified in the 2003–04 Governor's Budget as submitted to the Legislature. At the time that the 2003–04 Governor's Budget is submitted to the Legislature, the Department of Finance shall (1) submit proposed statutory changes necessary to achieve the reductions, and (2) provide a report to the Joint Legislative Budget Committee and the budget committee in each house identifying the reductions allocated to each department. For each reduction, the report shall identify the program or programs affected, how and when the reduction will be accomplished, and the effect of each reduction on program functions or services.

SEC. 2. Section 3.91 is added to the Budget Act of 2002 to read as follows:

Sec. 3.91. As it would be in the best interest of the state to encourage the early retirement of state employees, the Governor shall, within 30 days of the effective date of this act, issue an executive order in accordance with Section 20901 of the Government Code and Section 22715 of the Education Code to provide state employees from designated units that meet the required conditions an additional two years of service credit.

SEC. 3. (a) Not later than June 30, 2004, the Director of Finance shall abolish at least 1,000 positions in state government, including positions in departments, agencies, boards, commissions, state universities, and other employment authorities of the state. The positions shall be identified in the proposed state budget for the 2003–04 fiscal year.

(b) The Director of Finance shall determine which positions shall be abolished in accordance with the following criteria:

(1) The director may not abolish positions that directly provide 24-hour care, public safety, and critical services to the state.

(2) The director shall give priority to the elimination of positions that are vacant through attrition in order to minimize layoffs.

(3) The director shall give priority to the elimination of administrative and managerial positions that do not provide direct services to the public.

(c) The director shall notify in writing the Chairperson of the Joint Legislative Budget Committee and the chairperson of the committee in each house that considers appropriations not later than 90 days prior to the effective date of an action to abolish any position.

(d) On or before July 31, 2004, the Director of Finance shall, in consultation with the Director of Personnel Administration, submit a report to the Joint Legislative Budget Committee and the Joint Legislative Audit Committee that sets forth all positions that were abolished pursuant to this section.

SEC. 4. The total expenditure authorizations from the General Fund for the 2003–04 fiscal year shall be limited to the total revenues to the General Fund for the 2003–04 fiscal year.

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:

This act contains provisions for strategic planning and performance measurement concerning state government expenditures that are imperative to bring state spending within available resources to ensure the health and welfare of the citizens of the state. It is therefore necessary that this act go into immediate effect.

CHAPTER 1024

An act to add Title 13 (commencing with Section 95500) to the Government Code, to repeal Chapter 17 (commencing with Section 50897) of Part 2 of Division 31 of the Health and Safety Code, to amend Sections 12201 and 12201.03 of, and to add Sections 11155.4, 11265.3, and 18910 to, the Welfare and Institutions Code, and to amend Provision 7 of Item 5175-101-0001 of Section 2.00 of the Budget Act of 2002, relating to human services.

[Approved by Governor September 28, 2002. Filed with Secretary of State September 28, 2002.]

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

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

(a) Assets provide families an economic cushion and enable them to make investments in their future. Assets also provide parents a psychological orientation toward the future in regard to their children and the stake they have in their community.

(b) Providing a structured savings situation for low-income and working poor individuals enhances their chances of fulfilling major life goals and incorporates them into the economic mainstream.

(c) Individual development accounts can provide working Americans with strong incentives to build assets, basic financial management training, and access to secure and relatively inexpensive banking services.

(d) Research findings on the impact of individual development accounts suggest that low-income individuals have the capacity to save and that individual development accounts are an efficient method to help individuals establish savings patterns.

(e) Individual development accounts have become increasingly popular and have earned bipartisan support around the country and in California.

(f) To date, California has failed to join the efforts of the federal government, private sector, and low-income individuals in helping families build assets through individual development accounts.

SEC. 2. Title 13 (commencing with Section 95500) is added to the Government Code, to read:

TITLE 13. CALIFORNIA SAVINGS AND ASSET PROJECT

95500. An individual development account program, to be known as the California Savings and Asset Project, is hereby established. The program shall be administered by the Employment Development Department.

95501. This title shall become operative upon an appropriation of funds by the Legislature, or the allocation of existing discretionary funds by the Governor pursuant to Section 128(a) of the Workforce Investment Act of 1998 (29 U.S.C. Sec. 2853(a)), for the specific stated purpose of establishing the California Savings and Asset Project. This title shall be implemented to the extent that funding is appropriated in the annual Budget Act or any future act by the Legislature, or allocated by the Governor.

95502. For purposes of this title, the following definitions apply:

(a) ''Community development credit union'' means any credit union chartered under federal or state law.

(b) ''Community development financial institution'' means any community development financial institution certified by the Community Development Financial Institution Fund.

(c) ''Department'' means the Employment Development Department.

(d) ''Indian tribe'' means any Indian tribe, as defined in Section 4(12) of the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. Sec. 4103(12)), and includes any tribal subsidiary, subdivision, or other wholly owned tribal entity.

(e) ''Individual development account'' means a matched savings account held in a financial institution, created or organized for an individual as part of an individual development account program earmarked for specific asset-building purposes.

(f) ''Nonprofit facilitator'' means the nonprofit organization exempt from taxation under Section 501(c)(3) of the Internal Revenue Code that contracts with the department for the project.

(g) ''Participant'' means any individual who has contracted with a service provider to participate in the California Savings and Asset Project.

(h) ''Project'' means the California Savings and Asset Project.

(i) ''Qualified business capitalization'' means qualified business expenditures for the capitalization of a qualified business pursuant to a qualified plan.

(j) ''Qualified business expenditures'' means expenditures included in a qualified plan, including capital, plant, equipment, working capital, and inventory expenses.

(k) ''Qualified plan'' means a business plan or a plan to use a business asset purchase that is approved by a financial institution, a business development training or technical assistance organization, or a nonprofit loan fund having demonstrated fiduciary integrity; contains a description of services, or goods to be sold, a marketing plan, and a projected financial statement; and requires the eligible individual to obtain the assistance of an experienced entrepreneurial adviser to review the plan for quality and completeness.

(*l*) ''Service providers'' means entities that contract with the nonprofit facilitator, and that are nonprofit organizations exempt from taxation under Section 501(c)(3) of the Internal Revenue Code, community development credit unions, community development financial institutions, or Indian tribes that are eligible to receive funds appropriated or allocated for the project.

95503. (a) The department shall issue by July 1, 2003, a request for proposals to entities that may apply to become the nonprofit facilitator of the project. Applications shall include, but need not be limited to, all of the following components:

(1) A description of the organization submitting the proposal.

(2) A description of the planning process used to design the project.

(3) A business plan, including a market assessment, to be developed and used during the planning process, describing a target group or target area and the needs to be served, and cultural considerations.

(4) A marketing plan, including a description of the outreach and recruitment of participants for the project that uses information developed in the planning and market assessments.

(5) A description of project operations, including a description of the fiscal management plan, staffing pattern, arrangements with financial institutions, data management plan, and partnerships with other organizations.

(6) A description of the accounting methods to be used and evidence that the entity has the capacity to monitor pooled matching funds and project funding.

(7) A financial projection, including a proposed budget and fund development strategies.

(8) An annual audit.

(9) A description of primary project policies and procedures.

(10) A description and plan for delivery of personal financial management training and asset-specific training.

(b) The department shall, with the cooperation of the nonprofit facilitator, submit an annual report to the Legislature on the first day of January, commencing in 2004. The report shall include, but is not limited to, all of the following:

(1) The number of enrolled participants.

(2) The number of individual development accounts established.

(3) The aggregate savings achievements.

(4) The number of participants who have completed the program.

(5) The number of participants who have completed financial education.

(6) A minimum of two participant profiles.

(7) A financial report, including the use of state funds, other leveraged funds, and the status of other committed funds.

(8) A summary of program achievements and obstacles.

(9) Program and fiscal projections for the next year.

(c) (1) The department shall assemble a review committee to read and score proposals by interested nonprofit facilitators in response to the request for proposals. The review committee shall include a staff member from the department and other experienced individual development account practitioners from diverse communities.

(2) The review committee shall score the proposals according to the components required in Section 95504, as well as best practice standards agreed upon by the asset-building field and a demonstrated capacity to

conduct statewide activities and subcontract with service providers around the state.

(d) The department shall select a nonprofit facilitator to participate in the project based on the proposals submitted and scored pursuant to this section.

(e) The department shall allocate funding to the nonprofit facilitator for the project, subject to the requirements and limitations of the funding source.

(f) The department shall annually pay the nonprofit facilitator up to 10 percent of the project's total annual allocation for the purpose described in Section 95504, and may reserve up to 5 percent of the project's total annual allocation for its own administrative purposes.

95504. (a) The nonprofit facilitator shall subcontract with service providers to implement the project around the state. The nonprofit facilitator shall make an attempt to select service providers for programs of different size, geographical distribution, and target population to be served. Additionally, the nonprofit facilitator may consider giving special consideration to service providers that demonstrate partnerships with local public agencies.

(b) The service providers shall perform all of the following duties in implementing the project:

(1) Recruit and select participants who meet the following criteria:

(A) The individual is at least 18 years of age.

(B) The individual is a member of a household with an income of not more than 80 percent of the area median income based on United States Department of Housing and Urban Development guidelines at the time of program enrollment.

(C) The individual is not a dependent of another person for federal income tax purposes.

(D) The individual is not a debtor for a judgment resulting from nonpayment of a court-ordered child support obligation.

(E) The individual meets eligibility criteria as defined by the funding source for the program created under this title.

(2) Develop and sign contracts with each participant, to include all program requirements and policies governing the participant's account.

(3) Assist participants in opening individual development accounts. CalWORKs recipients participating in the project may consider using a restricted account as described in Section 11155.2 of the Welfare and Institutions Code. Otherwise, the accounts shall be established using a parallel account structure that meets both of the following requirements:

(A) One separate account shall be established for each participant in a federally or state insured financial institution, community development financial institution, any financial institution eligible to hold an individual retirement account, or community development

credit union, in which each participant's savings are deposited and maintained. The program participant may withdraw his or her own savings at any time.

(B) Another separate, parallel account shall be established and maintained by service providers in which the matching funds from state, federal, and private donations are kept. The parallel account may contain all matching funds for a pool of any service provider's participants.

(4) Help individuals receive their matching funds at the conclusion of the program.

(5) Provide participants with a minimum of 12 hours of financial education and training. The education and training shall include, but need not be limited to, all of the following:

(A) Household and personal budget management.

(B) Economic literacy.

(C) Credit repair.

(6) Develop a program dismissal process for participants who do not fulfill program participation requirements, and seek to ensure that matching funds are used for their intended purposes.

(7) Collect and maintain information about their programs, in a manner that provides the capacity to report semiannually all of the following information to the department:

(A) The number and demographic characteristics of participants enrolled in the program.

(B) The number of accounts established.

(C) The individual and aggregate savings level of participants.

(D) The number of participants who closed accounts and the amount of associated savings.

(E) The actual and proposed program budget.

(F) The size and origin of matching pool funds received, obligated, and paid to participants.

(G) The program achievements and obstacles.

(H) Twelve-month program and financial projections.

(I) At least one participant profile.

95505. (a) Prior to receiving funds under this title, each service provider shall, within six months of being selected to act as a service provider, provide written documentation to the department that it has secured matching funds from nonstate sources to match each state dollar provided under this title.

(b) Service providers shall recruit and select participants who meet the following criteria:

(1) The individual is at least 18 years of age.

(2) The individual is a member of a household with an income of not more than 80 percent of the area median income based on United States

Department of Housing and Urban Development guidelines at the time of program enrollment.

(3) The individual is not a dependent or another person for federal income tax purposes.

(4) The individual is not a debtor for a judgment resulting from nonpayment of a court-ordered child support obligation.

(c) Service providers shall develop and sign contracts with each participant, to include all program requirements and policies governing the participant's account.

(d) Service providers shall assist participants in opening individual development accounts. The accounts shall be established using a parallel account structure that meets both of the following requirements:

(1) One separate account is established for each participant in a federally or state insured financial institution, community development financial institution, any financial institution eligible to hold an individual retirement account, or community development credit union, in which each participant's savings are deposited and maintained. The program participant may withdraw his or her own savings at any time.

(2) Another separate, parallel account is established and maintained by service providers in which the matching funds from state, federal, and private donations are kept. The parallel account may contain all matching funds for a pool of any service provider's participants.

(e) Service providers shall help individuals receive their matching funds at the conclusion of the program. All state matching funds shall be paid directly to the vendor as specified by the program participant.

(f) Service providers shall provide participants with a minimum of 12 hours of financial education and training. The education and training shall include, but is not limited to, all of the following:

(1) Household and personal budget management.

(2) Economic literacy.

(3) Credit repair.

(g) Service providers shall develop a program dismissal process for participants who do not fulfill program participation requirements, and seek to ensure that matching funds are used for their intended purposes.

(h) Service providers shall collect and maintain information about their programs, and participants shall do so in a manner that provides the capacity to report all of the following information, semiannually, to the department:

(1) The number and demographic characteristics of participants enrolled in the program.

(2) The number of accounts established.

(3) The individual and aggregate savings level of participants.

(4) The number of participants who closed accounts and the amount of associated savings.

(5) The actual and proposed program budget.

(6) The size and origin of matching pool funds received, obligated, and paid to participants.

(7) The program achievements and obstacles.

(8) Twelve-month program and financial projections.

(9) At least one participant profile, and state maintenance of effort requirements.

(i) Each participant may save up to a maximum of three thousand dollars ($3,000) in total, over the life of his or her individual development account.

95506. Individuals selected to participate in the project shall do all of the following:

(a) Contract with his or her service provider.

(b) Regularly deposit funds into the individual development account. Participants may contribute to the individual development account using resources generated from the following sources:

(1) Earned income.

(2) Federal Earned Income Tax Credit refunds.

(3) Disability benefits.

(4) Child support payments.

(5) AmeriCorps stipends.

(6) Wages earned through self-employment.

(7) Job training program stipends.

(c) Select purchase goals for which the savings will be used. Participants may use savings generated by individual development accounts for any of the following purposes:

(1) Postsecondary and vocational education expenses, including tuition, fees, books, supplies, and equipment.

(2) Home purchase costs with respect to a principal residence.

(3) Major home repair.

(4) Assistive technology equipment or services for disabled participants when used to access employment, education, or training.

(5) Purchase of a vehicle to be used for employment, education, or training purposes.

(6) Qualified business capitalization.

(d) Communicate regularly with the service provider regarding the account.

(e) Participate in a minimum of 12 hours of training and education provided by the service provider.

(f) Maintain savings in the individual development account for a minimum of six months from the time the account was established.

95507. Pursuant to Internal Revenue Service Ruling 99-44, interest earned on funds deposited in the individual development account by the participant is taxable to the participant in the year it is earned, and funds

matched to an individual development account are considered a gift at the time they are paid and, therefore, are not considered taxable income to the participant.

95508. The financial institution in which an individual development account is established shall:

(a) Have no greater duties or responsibilities as to an individual development account than it has to any other savings account.

(b) Have no duty or responsibility to any withdrawal restriction established in the contract between the participant and the service provider.

SEC. 3. Chapter 17 (commencing with Section 50897) of Part 2 of Division 31 of the Health and Safety Code is repealed.

SEC. 4. Section 11155.4 is added to the Welfare and Institutions Code, to read:

11155.4. The principal and interest in an individual development account established in accordance with the federal requirements of Section 604(h) of Title 42 of the United States Code or established by a statewide individual development account program shall be exempt from consideration when determining eligibility and the amount of CalWORKs assistance.

SEC. 5. Section 11265.3 of the Welfare and Institutions Code, as added by Assembly Bill 444 of the 2001–02 Regular Session, is amended to read:

11265.3. (a) In addition to submitting the quarterly report form as required in Section 11265.1, during the quarterly reporting period, a recipient shall report the following changes to the county orally or in writing, within 10 days of the change:

(1) The receipt at any time during a quarterly reporting period of income, as provided by the department, in an amount that is likely to render the recipient ineligible, as provided by the department.

(2) The occurrence at any time during a quarterly reporting period of a drug felony conviction as specified in Section 11251.3.

(3) The occurrence, at any time during a quarterly reporting period, of an individual fleeing prosecution or custody or confinement, or violating a condition of probation or parole as specified in Section 11486.5.

(b) Counties shall inform each recipient of the duty to report under paragraph (1) of subdivision (a), the consequences of failing to report, and the amount of income likely to render the family ineligible for benefits no less frequently than once per quarter.

(c) When a recipient reports income pursuant to paragraph (1) of subdivision (a) the county shall redetermine eligibility and grant amounts as follows:

(1) If the recipient reports a change for the first or second month of a current quarterly reporting period, the county shall redetermine eligibility and grant amount for the current quarter by averaging the gross monthly income for any past month or months in the current quarter that was reasonably anticipated when the grant was previously calculated; the actual gross monthly income required to be reported under paragraph (1) of subdivision (a); and the gross monthly income that is reasonably anticipated for any future month or months remaining in the quarter. If the recipient is determined to be financially ineligible based on this average income, the county shall discontinue the recipient after timely and adequate notice. If the recipient is determined to be financially eligible using this average income, no change shall be made in the recipient's grant amount for the current quarterly reporting period.

(2) If the recipient reports a change for the third month of a current quarterly reporting period, the county shall not redetermine eligibility for the current quarterly reporting period, but shall redetermine eligibility and grant amount for the following quarterly reporting period as provided in Section 11265.2.

(d) (1) During the quarterly reporting period, a recipient may report to the county, orally or in writing, any changes in income or household circumstances that may increase the recipient's grant.

(2) Counties shall act upon changes in income reported during the quarterly reporting period that result in an increase in benefits, after verification specified by the department is received. Reported changes in income that increase the grant shall be effective for the entire month in which the change is reported. If the reported change in income results in an increase in benefits, the county shall issue the increased benefit amount within 10 days of receiving required verification.

(3) (A) When a decrease in gross monthly income is voluntarily reported and verified, the county shall redetermine the grant for the current month and any remaining months in the quarterly reporting period by averaging the gross monthly income for any past month in the current quarter that was reasonably anticipated when the grant was previously calculated; the actual gross monthly income reported and verified from the voluntary report for the current month; and the gross monthly income that is reasonably anticipated for any future month remaining in the quarterly reporting period.

(B) When the average is determined pursuant to subparagraph (A), and a grant amount is calculated based upon the averaged income, if the grant amount is higher than the grant currently in effect, the county shall revise the grant for the current month and any remaining months in the quarter to the higher amount and shall issue any increased benefit amount as provided in paragraph (2).

(4) Except as provided in subdivision (e), counties shall act only upon changes in household composition voluntarily reported by the recipients during the quarterly reporting period that result in an increase in benefits, after verification specified by the department is received. If the reported change in household composition is for the first or second month of the quarterly reporting period and results in an increase in benefits, the county shall redetermine the grant effective for the month following the month in which the change was reported. If the reported change in household composition is for the third month of a quarterly reporting period, the county shall not redetermine the grant for the current quarterly reporting period, but shall redetermine the grant for the following reporting period as provided in Section 11265.2.

(e) During the quarterly reporting period, a recipient may request that the county discontinue the recipient's entire assistance unit or any individual member of the assistance unit who is no longer in the home or is an optional member of the assistance unit. If the recipient's request was verbal, the county shall provide a 10-day notice before discontinuing benefits. If the recipient's report was in writing, the county shall discontinue benefits effective the end of the month in which the request is made, and simultaneously issue a notice informing the recipient of the discontinuance.

SEC. 6. Section 12201 of the Welfare and Institutions Code is amended to read:

12201. (a) Except as provided in subdivision (d), the payment schedules set forth in Section 12200 shall be adjusted annually to reflect any increases or decreases in the cost of living. Except as provided in subdivision (e), these adjustments shall become effective January 1 of each year. The cost-of-living adjustment shall be based on the changes in the California Necessities Index, which as used in this section shall be the weighted average of changes for food, clothing, fuel, utilities, rent, and transportation for low-income consumers. The computation of annual adjustments in the California Necessities Index shall be made in accordance with the following steps:

(1) The base period expenditure amounts for each expenditure category within the California Necessities Index used to compute the annual grant adjustment are:

Food	$ 3,027
Clothing (apparel and upkeep)	406
Fuel and other utilities	529
Rent, residential	4,883
Transportation	1,757
Total	$10,602

(2) Based on the appropriate components of the Consumer Price Index for All Urban Consumers, as published by the United States Department of Labor, Bureau of Labor Statistics, the percentage change shall be determined for the 12-month period which ends 12 months prior to the January in which the cost-of-living adjustment will take effect, for each expenditure category specified in paragraph (1) within the following geographical areas: Los Angeles-Long Beach-Anaheim, San Francisco-Oakland, San Diego, and, to the extent statistically valid information is available from the Bureau of Labor Statistics, additional geographical areas within the state which include not less than 80 percent of recipients of aid under this chapter.

(3) Calculate a weighted percentage change for each of the expenditure categories specified in subdivision (a) using the applicable weighting factors for each area used by the State Department of Industrial Relations to calculate the California Consumer Price Index (CCPI).

(4) Calculate a category adjustment factor for each expenditure category in paragraph (1) by (1) adding 100 to the applicable weighted percentage change as determined in paragraph (2) and (2) dividing the sum by 100.

(5) Determine the expenditure amounts for the current year by multiplying each expenditure amount determined for the prior year by the applicable category adjustment factor determined in paragraph (4).

(6) Determine the overall adjustment factor by dividing (1) the sum of the expenditure amounts as determined in paragraph (4) for the current year by (2) the sum of the expenditure amounts as determined in paragraph (4) for the prior year.

(b) The overall adjustment factor determined by the preceding computational steps shall be multiplied by the payment schedules established pursuant to Section 12200 as are in effect during the month of December preceding the calendar year in which the adjustments are to occur, and the product rounded to the nearest dollar. The resultant amounts shall constitute the new schedules for the categories given under subdivisions (a), (b), (c), (d), (e), (f), and (g) of Section 12200, and shall be filed with the Secretary of State. The amount as set forth in

subdivision (h) of Section 12200 shall be adjusted annually pursuant to this section in the event that the secretary agrees to administer payment under that subdivision. The payment schedule for subdivision (i) of Section 12200 shall be computed as specified, based on the new payment schedules for subdivisions (a), (b), (c), and (d) of Section 12200.

(c) The department shall adjust any amounts of aid under this chapter to insure that the minimum level required by the Social Security Act in order to maintain eligibility for funds under Title XIX of that act is met.

(d) (1) No adjustment shall be made under this section for the 1991, 1992, 1993, 1994, 1995, 1996, 1997, and 1998 calendar years to reflect any change in the cost of living. Elimination of the cost-of-living adjustment pursuant to this paragraph shall satisfy the requirements of Section 12201.05, and no further reduction shall be made pursuant to that section.

(2) Any cost-of-living adjustment granted under this section for any calendar year shall not include adjustments for any calendar year in which the cost of living was suspended pursuant to paragraph (1).

(e) For the 2003 calendar year, the adjustment required by this section shall become effective June 1, 2003.

SEC. 7. Section 12201.03 of the Welfare and Institutions Code is amended to read:

12201.03. (a) For the 1992, 1993, 1994, 1995, 1996, 1997, and 1998 calendar years, or for the period of January 1, 2003, to May 31, 2003, inclusive, if no cost-of-living adjustment is made pursuant to Section 12201, the payment schedules set forth in Sections 12200, 13920, and 13921, as adjusted pursuant to Section 12201, shall include the pass along of any cost-of-living increases in federal benefits under Subchapter 16 (commencing with Section 1381) of Chapter 7 of Title 42 of the United States Code.

(b) Notwithstanding paragraph (2) of subdivision (d) of Section 12201, any adjustments made pursuant to this section to reflect the pass along of federal cost-of-living adjustments shall be included in the base amounts for purposes of determining cost-of-living adjustments made pursuant to Section 12201.

(c) Notwithstanding subdivision (a), no pass along of any cost-of-living increase in federal benefits under Subchapter 16 (commencing with Section 1381) of Chapter 7 of Title 42 of the United States Code shall be made in 1994. This provision shall not apply to those persons receiving payments pursuant to subdivisions (e), (g), and (h) of Section 12200.

(d) Notwithstanding subdivision (a), in no event shall the payment schedules be reduced below the level required by the federal Social Security Act in order to maintain eligibility for federal funding under Title XIX of the federal Social Security Act, contained in Subchapter 19

(commencing with Section 1396) of Chapter 7 of Title 42 of the United States Code.

SEC. 8. Section 18910 of the Welfare and Institutions Code, as added by Assembly Bill 444 of the 2001–02 Regular Session, is amended to read:

18910. (a) To the extent permitted by federal law, regulations, waivers, and directives, the department shall implement the prospective budgeting, quarterly reporting system provided in Sections 11265.1, 11265.2, and 11265.3, and related provisions regarding the Food Stamp Program, in a cost-effective manner that promotes compatibility between the CalWORKs program and the Food Stamp Program, and minimizes the potential for payment errors.

(b) The department shall seek all necessary waivers from the United States Department of Agriculture to implement subdivision (a).

SEC. 9. Provision 7 of Item 5175-101-0001 of Section 2.00 of the Budget Act of 2002, as added by Assembly Bill 425, as amended June 29, 2002, is amended to read:

7. Notwithstanding Sections 27.00, 28.00, and 28.50 of this act, or any other provision of law, upon request of the Department of Child Support Services, the Department of Finance may augment the amount available for expenditure in this item to pay costs associated with the implementation of the California Child Support Automation System Project. The augmentation may be effected no sooner than 30 days after notification in writing of its necessity to the chairperson of the committee in each house of the Legislature that considers appropriations and the Chairperson of the Joint Legislative Budget Committee, or no sooner than whatever lesser time the chairperson of the committee, or his or her designee, may in each instance determine. The funds appropriated by this provision shall be consistent with the amount approved by the Department of Finance based on its review and approval of any required feasibility study report or equivalent document.

SEC. 10. No appropriation pursuant to Section 15201 of the Welfare and Institutions Code shall be made for the purpose of funding the amendments made to Sections 12201 and 12201.03 of the Welfare and Institutions Code by this act.

SEC. 11. (a) Sections 5 and 8 of this act shall only become operative if AB 444 of the 2001–02 Regular Session becomes operative.

(b) Section 9 of this act shall only become operative if AB 425 of the 2001–02 Regular Session becomes operative.

SEC. 12. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

CHAPTER 1025

An act to add Article 19 (commencing with Section 8420) to Chapter 2 of Part 6 of the Education Code, relating to after school programs.

[Approved by Governor September 28, 2002. Filed with Secretary of State September 28, 2002.]

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

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

(a) After school programs are a proven and cost-effective way to improve standardized test scores, prevent juvenile violence and crime, and reduce youth drug, tobacco, and alcohol use.

(b) After school programs provide constructive alternatives to risk-taking behaviors for youth on schooldays. Studies show that the after school hours between 3 p.m. and 6 p.m. are the peak hours for youths to become involved in juvenile crime, become victims of violent crime, to engage in teen sex, and to use drugs, tobacco, and alcohol.

(c) After school programs contribute to young people's successful transition to adulthood by providing challenging opportunities to build relevant life and work skills, develop relationships with caring adults and mentors, increase civic engagement, and give back to the community.

(d) The state's comprehensive after school program, the Before and After School Learning and Safe Neighborhoods Partnerships Program, does not include high school pupils.

(e) The state should increase after school programs for high school pupils, targeting those pupils most in need of resources that promote school success and the avoidance of high-risk behaviors.

(f) The state should require a rigorous evaluation to measure academic and behavioral outcomes attributable to after school programs for high school pupils.

(g) These evaluations should inform future policymakers regarding implementation of high school after school programs.

SEC. 2. Article 19 (commencing with Section 8420) is added to Chapter 2 of Part 6 of the Education Code, to read:

Article 19. 21st Century High School After School Safety and Enrichment for Teens Program

8420. This article shall be known and may be cited as the 21st Century High School After School Safety and Enrichment for Teens (High School ASSETs) program.

8421. There is hereby established the 21st Century High School After School Safety and Enrichment for Teens program. The purpose of the program is to create incentives for establishing locally driven after school enrichment programs that partner schools and communities to provide academic support and safe, constructive alternatives for high school pupils in the hours after the regular schoolday.

(a) A minimum of 10 high school after school programs shall be established to serve pupils in grades 9 to 12, inclusive.

(b) A high school after school program established pursuant to this article shall consist of the following two components:

(1) An academic assistance component that shall include, but need not be limited to, at least one of the following: preparation for the high school exit examination, tutoring, homework assistance, or college preparation, including information about the Cal Grant Program established pursuant to Article 3 (commencing with Section 69530) of Chapter 2 of Part 42. The assistance shall be aligned with the pupils' regular academic programs.

(2) An enrichment activities component that may include, but need not be limited to, community service, career and technical education, job readiness, opportunities for mentoring and tutoring younger pupils, service learning, arts, computer and technology training, physical fitness, and recreation activities.

(c) A program shall comply with locally determined requirements related to hours and days of program operation through the 2004–05 fiscal year. Commencing with the 2005–06 fiscal year and thereafter, a program shall comply with the State Department of Education's requirements related to the hours and days of program operation.

(d) An entity may operate programs on one or multiple sites. If an entity plans to operate programs at multiple sites, only one application is required.

(e) A program may operate on a schoolsite or on another site approved by the State Department of Education during the grant application process. A program located off school grounds shall not be approved unless both of the following criteria are met:

(1) Safe transportation is available to transport participating pupils if necessary.

(2) The program is at least as available and accessible as similar programs conducted on schoolsites.

(f) Applicants for grants pursuant to this article shall ensure that all of the following requirements are fulfilled, if applicable:

(1) The application includes a description of the activities that will be available for pupils and lists the program hours.

(2) The application includes an estimate of the following:

(A) The number of pupils expected to attend the program on a regular basis.

(B) The average hours of attendance per pupil.

(C) The percentage of pupils expected to attend the program less than three days a week, three days a week, and more than three days a week, for each quarter or semester during the grant period.

(3) The application documents the commitments of each partner to operate a program at a location or locations that are safe and accessible to participating pupils.

(4) The application demonstrates that pupils were involved in the design of the program and describes the extent of that involvement.

(5) The application identifies federal, state, and local programs that will be combined or coordinated with the high school after school program for the most effective use of public resources, and describes a plan for implementing the high school after school program beyond federal grant funding.

(6) The applicant complies with all federal requirements in preparing and submitting the application, as described in the State Department of Education's request for applications.

(g) The State Department of Education shall not establish minimum attendance requirements for individual pupils.

8422. (a) Priority for funding pursuant to this article shall be given to programs that serve pupils who attend schools whose scores on the Academic Performance Index are ranked in the lowest three deciles.

(b) A program established pursuant to this article shall be planned through a collaborative process that includes parents, pupils, representatives of participating schools, governmental agencies, including city and county parks and recreation departments, community organizations, law enforcement, and, if appropriate, the private sector.

(c) A high school after school program established pursuant to this article is not required to charge family fees or to conduct individual eligibility determination based on need or income.

(d) A program established pursuant to this article shall have the option of operating after school only or after school and during any combination of, before school, weekends, summer, intersession, and vacation.

8423. (a) The State Department of Education shall select a minimum of 10 programs to participate in the 21st Century High School After School Safety and Enrichment for Teens program from among

applicants that apply on forms and in a manner prescribed by the department. To the extent possible, the selection of applicants by the department shall result in an equitable distribution of grant awards to applicants in northern, southern, and central California, and in urban, suburban, and rural areas of the state.

(b) The State Department of Education shall consider the following criteria in awarding grants, with primary emphasis given to the criteria described in paragraphs (1) to (9), inclusive:

(1) Strength of the educational component and alignment with state academic standards, preparation for the high school exit examination, and other academic interventions.

(2) Quality of the enrichment component.

(3) Strength of staff training and development component and degree to which staff training is integrated with training of regular schoolday staff.

(4) Scope and strength of collaboration, including demonstrated support of the principal and staff from participating schools.

(5) Completion of a needs assessment in which pupils express which activities or programs are most desired by them. The needs assessment shall be conducted with a representative group of pupils reflective of the ethnicity and academic standing of the student body of the school.

(6) Scope and quality of actions taken to solicit input on program design from, and to assess the needs of, pupils considered at risk or in need of academic support.

(7) Strength of plans to attract pupils, particularly pupils considered at risk or in need of academic support, on a regular basis.

(8) Demonstrated capacity to administer a successful high school after school program.

(9) Availability of after school programs at elementary and middle schools attended by pupils from participating schools for purposes of continuity and linkages among programs.

(10) Access to and availability of computers and technology.

(11) Inclusion of a nutritional snack.

(12) Capacity to respond to program evaluation requirements.

(13) Demonstrated fiscal accountability.

(c) The State Department of Education shall develop reporting requirements and allocation procedures, including procedures to reimburse startup costs for programs established pursuant to this article.

8425. The State Department of Education shall implement this program only to the extent that federal funds are appropriated for purposes of the program. It is the intent of the Legislature that available federal funds be appropriated annually for the program established pursuant to this article, through the annual Budget Act.

(a) Of the funds appropriated for the program in the first year, two hundred fifty thousand dollars ($250,000) shall be allocated to the State Department of Education to conduct a three-year evaluation of the programs established pursuant to this article and to make recommendations for future program expansion.

(b) The State Department of Education may spend up to 3 percent of the funds appropriated for purposes of this article to provide training by qualified and experienced personnel, to convene regular meetings among grantees, and to ensure quality program implementation and sustainability, including unscheduled site visits.

8426. (a) A grantee that establishes a program pursuant to this chapter is eligible to receive a five-year grant, subject to annual reporting and recertification as required by the State Department of Education, for upfront payments of up to two hundred fifty thousand dollars ($250,000) per year per program.

(1) The administrator of a program may supplement, but not supplant existing funding for after school programs with grant funds awarded pursuant to this article.

(2) Up to 15 percent of the initial year's grant amount for each grant recipient may be utilized for startup costs. Under no circumstance may funding for startup costs result in an increase in the grant recipient's total funding above the approved grant amount.

(3) A program participant may expend on indirect costs no more than the lesser of the following:

(A) The school district's indirect cost rate, as approved by the State Department of Education for the appropriate fiscal year.

(B) Five percent of the state program funding received pursuant to this article.

(4) A program participant may expend no more than 15 percent of its grant award on administrative costs. For purposes of this section, administrative costs shall include indirect costs, as described in paragraph (3).

(5) In addition to administrative costs, a program participant may expend up to the greater of 6 percent of its state funding or seven thousand five hundred dollars ($7,500) to collect outcome data for evaluation and for reports to the State Department of Education.

(6) All state funding awarded to a program pursuant to this article that remains after subtracting the administrative costs and outcome data costs authorized by paragraphs (5) and (6) shall be allocated to the program site for direct services to pupils.

(b) When determining recertification after each grant year, the State Department of Education may consider whether a program is operating consistent with the terms of its application, including whether the number of pupils served on a regular basis is consistent with the number

estimated, and may consider the strength of any justifications or future plans offered by the program to address inconsistencies with the terms of the application. If the State Department of Education finds that a program is not operating consistent with the terms of its application, the department may take appropriate action, including denying recertification or reducing the level of grant funding.

8427. (a) A high school after school program established pursuant to this article shall submit to the State Department of Education annual outcome-based data for evaluation, including research-based indicators of program quality and outcome measures including, but not limited to, academic performance, performance on the high school exit examination, graduation rates to the extent possible, school attendance, and positive behavioral changes.

(b) A program shall also submit annual attendance data results to the State Department of Education to facilitate evaluation and compliance with the grant program requirements, as established by the department.

(c) A program also shall report all of the following, at a minimum, three times annually:

(1) The number of pupils served on a regular basis and the extent of pupil participation.

(2) The average hours of attendance per pupil.

(3) The percentage of pupils that attend the program less than three days a week, three days a week, and more than three days a week.

(4) The extent to which the program attracts pupils considered at risk or in need of academic support.

8428. The State Department of Education shall order an independent evaluation of the program funded pursuant to this article to be prepared and submitted to the Legislature. The evaluation shall include a comparison of outcomes for participating pupils and similarly situated pupils who did not participate in a program. An interim evaluation shall be submitted to the Legislature 180 days after the completion of the second year of the program, and a final evaluation shall be submitted 180 days after the completion of the third year of the program.

CHAPTER 1026

An act to add and repeal Part 38 (commencing with Section 64200) of the Education Code, relating to education.

[Approved by Governor September 28, 2002. Filed with Secretary of State September 28, 2002.]

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

SECTION 1. Part 38 (commencing with Section 64200) is added to the Education Code, to read:

PART 38. QUALITY EDUCATION MODEL

64200. (a) It is the intent of the Legislature to develop a quality education model, within the minimum funding requirements for school districts and community college districts imposed by Section 8 of Article XVI of the California Constitution, to enable the Legislature to make more informed annual budgetary decisions relative to the best allocation of resources for education and to provide substantially improved accountability, within a framework of local control over the use of educational resources. The model is intended to identify the educational components, educational resources, and corresponding costs that are necessary to provide the opportunity for a quality education to every pupil.

(b) It is further the intent of the Legislature that parents, classroom teachers, other educators, governing board members of school districts, and the public be involved in the design and implementation of the Quality Education Model.

64201. (a) The California Quality Education Commission is hereby established, to become operative on July 1, 2003, for the purpose of developing, evaluating, validating, and refining a quality education model for prekindergarten through grade 12, to provide state policymakers with adequate tools to enable them to establish the reasonable costs of schools, and the best direct available resources so that the vast majority of pupils can meet academic performance standards established by the state. The work of the commission shall serve to implement the principles and direction described in the final report of the Joint Committee to Develop a Master Plan for Education, and shall identify the educational components, educational resources, and corresponding costs necessary to provide the opportunity for a quality education to every pupil.

(b) (1) The commission shall be composed of 13 members, who shall be representative of the diversity of the state population, and shall include:

(A) Leaders from business and education.

(B) Representatives of elementary schools, middle schools, and high schools.

(C) Representatives of urban districts, suburban districts, and rural districts.

(D) Representatives of the research community with experience in educational policy and best practices.

(2) Except for the first appointments to the Quality Education Commission, a member shall serve a four-year term. A person may not be appointed to serve more than two consecutive terms. The first terms of the members first appointed to the Quality Education Commission shall be as follows:

(A) Three shall serve a term expiring August 1, 2005.

(B) Five shall serve a term expiring August 1, 2006.

(C) Five shall serve a term expiring August 1, 2007.

(3) The commission members shall be appointed as follows:

(A) Seven members shall be appointed by the Governor and approved by the Senate. Of the seven members appointed by the Governor and approved by the Senate, one shall be a currently employed public school teacher, one shall be a currently employed public school administrator, and one shall be a current public school board member. The terms of these members first appointed shall be staggered so that the terms of two members shall expire on August 1, 2005, the terms of two members shall expire on August 1, 2006, and the terms of three members shall expire on August 1, 2007.

(B) Two members shall be appointed by the Senate Rules Committee. The terms of these members first appointed shall be staggered so that the term of one member shall expire on August 1, 2006, and the term of the other shall expire on August 1, 2007.

(C) Two members shall be appointed by the Speaker of the Assembly. The terms of these members first appointed shall be staggered so that the term of one member shall expire on August 1, 2006, and the term of the other shall expire on August 1, 2007.

(D) Two members shall be appointed by the Superintendent of Public Instruction. The terms of these members first appointed shall be staggered so that the term of one member shall expire on August 1, 2005, and the term of the other shall expire on August 1, 2006.

(4) (A) The commission, by majority vote of all its sitting members, shall elect its own chairperson from among its sitting members.

(B) The commission shall appoint an executive director, who shall be exempt from the provisions of the State Civil Service Act, and may in its discretion remove him or her by a majority vote of all its members. The executive director shall be the secretary to the commission and the commission's chief executive officer. The executive director shall receive the salary that the commission determines, and, subject to appropriations, other prerequisites that the commission determines.

(C) Pursuant to subdivision (a) of Section 11126 of the Government Code, the commission may hold closed sessions when considering matters relating to the recruitment, appointment, employment, or

removal of the executive director. Decisions made during a closed session of the commission related to the recruitment, appointment, employment, or removal of the executive director shall be made known at the next public meeting of the commission.

(5) (A) A vacancy on the commission shall be filled within 30 days by the appointing power that appointed the prior holder of the position. An appointment to fill a vacancy shall be for the remaining portion of the term of the member whom the appointee succeeds. A vacancy may not impair the right of the remaining sitting members to exercise all of the powers of the commission.

(B) A majority of the sitting members of the commission constitutes a quorum for the transaction of business.

(C) ''Sitting member'' means an individual who has been appointed and is currently serving on the Quality Education Commission.

(c) The commission shall do all of the following:

(1) Identify key issues to address in developing, evaluating, validating, and refining the Quality Education Model. The commission shall develop complete descriptions of prototype schools, at least one for each of the three levels of elementary and secondary education, to form models that fairly capture the diversity of public schools in California. The commission also shall determine which school characteristics, including demographics, should be considered, and which additional cost elements may be required to compose prototype schools most likely to produce high quality outcomes.

(2) Focus on practical alternatives that are achievable within the minimum funding requirements for school districts and community college districts imposed by Section 8 of Article XVI of the California Constitution.

(3) Solicit comments, criticisms, and suggestions from professional educators, education administrators, and education policy experts relative to the elements of the Quality Education Model. The commission shall consult expert panels for advice relating to research-based, best practices most associated with high pupil achievement.

(4) Solicit public comments, criticisms, and suggestions relative to the elements of the Quality Education Model. The commission shall provide the public with information sufficient to enable interested members of the public to understand the process being used to evaluate, validate, and refine the Quality Education Model, and the reasonable choices or options under consideration. The commission shall provide the public with information explaining the criteria and models chosen and the basis for those choices.

(5) Rely upon the most accurate available cost data, cost estimation methods, and reasonable and expert assumptions in those instances in

which data are lacking. The commission shall identify data gaps, modeling assumptions, and recommendations for near-term and long-term improvement of the model.

(6) Deliver a report, comprised of the prototype models and the commission's findings and recommendations, to the Governor and Legislature no later than 12 months after the commission first convenes. The report shall include recommendations for any statutory changes to conform the existing school finance structure to the Quality Education Model proposed in the report.

(d) The commission established by this section shall, upon delivery of the report, continue as a standing commission, its members serving staggered terms, with the following responsibilities:

(1) To test the Quality Education Model's reliability, by evaluating the accuracy of the cost elements and assessing whether moneys are actually used to desired effects.

(2) To refine the means with which to account for missing elements, including intangible factors or quality indicators that affect student achievement and for which data are not readily available.

(3) To identify the Quality Education Model's assumptions, assess the validity of those assumptions, and improve their accuracy, especially by finding those resources and methods that successful schools embody.

(4) To develop the capacity to estimate and forecast such factors as the cost of the Quality Education Model's implementation given model refinement, the growth of applicable revenues, the pace of implementation, and the effects of the model on student performance.

(5) To make recommendations for improvements in the state's data-gathering systems.

64202. It is the intent of the Legislature that dedicated state funding for the California Quality Education Commission will be provided in the annual Budget Act. For the purposes of expenditures for the support of the commission, including the expenses of the members of the commission, the commission shall be deemed to be within the executive branch of state government, but the commission may only be subject to the control or direction of an officer or employee of the executive branch for ensuring that appropriated funds are encumbered and accounted for in accordance with state law.

64203. This part shall remain in effect only until January 1, 2008, and as of that date is repealed, unless a later enacted statute, that is enacted on or before January 1, 2008, deletes or extends that date.

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CHAPTER 1027

An act to add Section 24200.6 to the Business and Professions Code, relating to alcoholic beverages.

[Approved by Governor September 28, 2002. Filed with Secretary of State September 28, 2002.]

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

SECTION 1. Section 24200.6 is added to the Business and Professions Code, to read:

24200.6. The department may revoke or suspend any license if the licensee or the agent or employee of the licensee violates any provision of Section 11364.7 of the Health and Safety Code. For purposes of this provision, a licensee, or the agent or employee of the licensee, is deemed to have knowledge that the item or items delivered, furnished, transferred, or possessed will be used to plant, propagate, cultivate, grow, harvest, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body a controlled substance, if the department or any other state or local law enforcement agency notifies the licensee in writing that the items, individually or in combination, are commonly sold or marketed for that purpose.

CHAPTER 1028

An act to add Chapter 6.6 (commencing with Section 52070) to Part 29 of the Education Code, relating to pupil performance, and making an appropriation therefor.

[Approved by Governor September 28, 2002. Filed with Secretary of State September 28, 2002.]

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

SECTION 1. The Legislature hereby finds and declares as follows:

(a) Recent California educational reform efforts have focused on the needs of elementary and middle school pupils. Since the passage of the Public Schools Accountability Act of 1999, California has seen significant gains for pupils at the elementary level, and moderate gains at the middle school level. High school pupils across the state, however, have not realized the same level of improvement.

(b) A large percentage of California's high school pupils are scoring in the bottom quartile on the test administered pursuant to the STAR Program. Between 55 and 65 percent are scoring below the 50th percentile. Dropout rates are significantly higher and test scores are significantly lower for Latino and African-American high school pupils and pupils in poverty.

(c) California's future requires increasing excellence and greater equity throughout our public schools. Preserving democracy in our diverse state demands that public schools provide pupils with the experiences and knowledge that will build the civic competencies of tolerance, intergroup communication, conflict resolution, leadership, and engagement in public life. Low California and national voting levels are just one example that demonstrates a lack of civic involvement by young adults.

(d) Our economy requires increasingly larger numbers of ''knowledge workers'' — employees who possess strong analytical, problem solving, and critical-thinking skills. Our public education system should prepare pupils to be knowledge workers — workers able to command good salaries and enjoy more fulfilling employment opportunities.

(e) The basic structure of high schools has not changed in 100 years. Many comprehensive high schools, modeled on what worked 100 years ago, have become large impersonal schools, where a significant number of pupils experience anonymity, a lack of challenge, and a lack of purpose. Many pupils in these high schools take less demanding, general track courses that fail to give them the knowledge and skills to participate in the workplace, or to go on to pursue postsecondary education.

(f) At the same time, California state standards and the implementation of the high school exit examination have raised expectations of pupil performance. It is imperative that we address the needs of our high school pupils if California is to compete in the 21st century.

(g) Studies show that small schools have higher attendance rates, higher grade point averages, lower dropout rates, and pupils and teachers who report being more satisfied with the experience.

(h) Excellence in secondary education requires both new visions for high schools and increased capacity to overcome entrenched systemic barriers and finding solutions to persistent problems. District-community partnerships will strengthen district capacity to make the kinds of changes that over time will result in effective high schools for all of a community's youth. District-community partnerships will also enhance public accountability for and investment in the

education and academic achievement of high school pupils in the community.

(i) High school success at a systemic level requires community and business participation and involvement by teachers, parents and pupils, the school, the school district, and the school community.

(j) Substantial progress at the high school level cannot be made by isolated, struggling schools or by creating a few high quality magnet schools. Enabling all adolescents to achieve at high levels requires transforming the system of secondary education.

(k) The Carnegie Corporation of New York and the Bill and Melinda Gates Foundation have provided well over three hundred million dollars ($300,000,000) to fund high school reform efforts throughout the nation. These foundations are funding programs in San Diego, Oakland, and Sacramento.

(*l*) This act is modeled after the Carnegie Corporation of New York's sixty million dollar ($60,000,000) ''Schools for a New Society'' initiative, which has had a significant impact on reform efforts in seven school districts throughout the nation.

(m) The Legislature finds and declares that the Bill and Melinda Gates Foundation and the Carnegie Corporation of New York have committed to provide technical assistance to recipients of grants under the High School Pupil Success Act, and to fund a minimum of two convening meetings for those recipients to share ideas.

SEC. 2. Chapter 6.6 (commencing with Section 52070) is added to Part 29 of the Education Code, to read:

CHAPTER 6.6. HIGH SCHOOL PUPIL SUCCESS ACT

52070. (a) This chapter shall be known, and may be cited as, the High School Pupil Success Act.

(b) The High School Pupil Success Act is hereby established. This chapter shall be jointly administered by the Superintendent of Public Instruction and the Secretary for Education, in consultation with an advisory committee consisting of representatives from the State Department of Education, the State Board of Education, the California School Boards Association, the Association of California School Administrators, teacher associations, the California Parent Teacher Association, the California County Superintendents Educational Services Association, and education nonprofit entities with proven expertise in systemic education reform as determined by the Superintendent of Public Instruction and the Secretary for Education.

(c) The purpose of this chapter is to develop public-private partnerships on both the local and state levels to aid in the redesign and reformation of California's high schools for the 21st century. A school

district that maintains a high school may apply to participate in the program established pursuant to this chapter. A school district that receives private funds for those purposes described in subdivision (e) shall not be eligible to receive funds under this chapter.

(d) This chapter shall be implemented in two phases. In Phase I, school districts awarded grants pursuant to this chapter shall form a ''district-community partnership'' with a community-based organization. Together with the involvement of the whole school community including parents, teachers, and pupils, the district-community partnership shall develop a five-year reform and redesign plan for the development of effective high schools for all pupils in their districts. In Phase II, school districts shall implement their plan.

(e) The reform and redesign plan developed for Phase I of the act may include strategies to accomplish any of the following:

(1) Smaller learning communities within existing high schools.

(2) Free-standing small high schools.

(3) Flexible scheduling alternatives to meet the needs of high school pupils.

(4) Rigorous academic curricula to prepare high school pupils for the 21st century workplace.

(5) The involvement of business, local universities, parent groups, youth development organizations, community-based organizations, medical centers, financial institutions, and other segments of the local community to strengthen curriculum, increase pupil motivation and expand professional development opportunities for high school pupils and generally to improve the academic achievement of high school pupils.

(6) The reformation of central office administration to meet the needs of schoolsites to improve academic achievement of high school pupils.

(7) Increased alignment of programs between middle school and high school and providing support services for pupils making this transition.

(f) The reform and redesign plan shall be systemic in nature and apply to all high schools within the district as well as the central administration functions needed to support reform at the site level.

(g) The Superintendent of Public Instruction and the Secretary for Education, in consultation with the advisory committee, shall develop a request for proposals no later than January 30, 2003. The Superintendent of Public Instruction shall issue a request for proposals to all school districts with high schools for planning grants to implement Phase I of this chapter, no later than January 30, 2003.

(h) To apply for a grant under subdivision (g), a school district shall create a district community partnership to assist the school district in both of the following:

(1) Developing a reform and redesign plan for Phase I pursuant to subdivisions (d) and (e).

(2) Implementing the grant in accordance with Phase II of this chapter pursuant to subdivision (d) and Section 52073.

(i) The school district shall act as the administrative and fiscal agent for the grant.

52071. (a) Phase I grant proposals shall include the following components:

(1) Proposal summary that describes the five-year reform and redesign plan to be developed.

(2) Problem analysis and goals, that shall include, but are not limited to, the following:

(A) How the pupils in the district have performed on the high school exit exam.

(B) How this proposal will link reform efforts being implemented in the elementary and middle schools of that district to ensure progress toward pupil success on the high school exit exam.

(C) How this proposal will link reform efforts being implemented in the district to ensure progress toward all of the following:

(i) High schools meeting Academic Performance Index growth targets.

(ii) Improved high school pupil assessment scores pursuant to 60640.

(iii) Improved high school graduation rates.

(iv) Decreased high school student suspension and expulsion rates.

(3) Proposed membership in the district-community partnership.

(4) Description of the proposed work-funding needs, and the ability of the district-community partnership to leverage existing funds and to seek new funds to implement the reform and redesign plan that is developed in Phase I.

(5) Administration and governance of the district-community partnership.

(6) Budget summary delineating proposed expenditures of the planning grant funds received.

(b) The criteria to be used by the Superintendent of Public Instruction and the Secretary for Education in consultation with the advisory committee to evaluate all grant proposals and to select eight participating school districts shall include, but not be limited to, the following:

(1) Quality of ideas, vision and goals for effective high schools for all pupils.

(2) Clarity of problem definition and analysis of structural and capacity barriers.

(3) Strength of leadership within the district administration and the proposed community partnership for building effective high schools for all pupils.

(4) Demonstrated willingness to engage constituencies at the schools including principals, teachers, pupils, and parents, and to engage constituencies in the communities in planning high school reform.

(5) Capacity of the district-community partnership members individually and collectively to overcome system barriers and building public will.

(6) Prior district progress in elementary and middle school change including pupil performance.

(7) Capacity of the school district to manage the district-community partnership and the planning process.

(8) Ability of the district-community partnership to work effectively with each other.

(9) Alignment of the proposal with California state educational standards and preparation for the high school exit examination.

(c) Priority for selection shall be given to those district proposals that contain all of the following:

(1) Districts with one or more high schools ranked in the first or second decile on the Academic Performance Index.

(2) Proposals that have one or more high schools participating in the Immediate Intervention/Underperforming School Program established by Article 3 (commencing with Section 52053) of Chapter 6.1 or the High Priority Schools Grant Program contained in Article 3.5 (commencing with Section 52055.600) of Chapter 6.1, and have identified in their proposal strategies to integrate these reform efforts into the reform and redesign plan required pursuant to this chapter.

(d) In consultation with the advisory committee, the Superintendent of Public Instruction and the Secretary for Education shall select, based on the criteria pursuant to subdivision (b), from those school districts that submit proposals, eight school districts to each receive a planning grant to develop in Phase I of this chapter. The eight school districts selected to participate, when considered as a group, shall be representative of the various geographic regions and the demographics of the state.

52072. (a) A school district that is selected to receive a planning grant under this chapter for Phase I shall be awarded a one-year planning grant of fifty thousand dollars ($50,000) per each high school in the district with a maximum award of two hundred fifty thousand dollars ($250,000) for the district. A participating school district shall target a minimum of fifty thousand dollars ($50,000) of the grant funds received toward developing strategies for improving those high schools in the district that are ranked in the lowest two deciles. If the district receives

the maximum award of two hundred fifty thousand dollars ($250,000), those funds shall first be utilized to develop a strategic plan that assists the lowest performing high schools in that district.

(b)The planning grant awarded pursuant to subdivision (a) is intended to cover the costs of Phase I planning activities, including, but not limited to, data collection, consultations with pupils, teachers, parents, and other community stakeholders, meetings and planning retreats, consultant costs, travel costs of school district-community partnership representative visits to cities already implementing a strategy or design under consideration, and dissemination activities. A school district that receives a grant shall be known as a participating school district.

(c) The school district-community partnership is required to provide a one dollar ($1) match for every one dollar ($1) of the Phase I grant money awarded. The matching funds may come from existing or new public funds, and local community, private and discretionary funds. The matching funds may only be used for Phase I planning activities. In-kind resources may not be used to fulfill the match requirement.

52073. (a) Proposals for Phase I grants shall be submitted to the Superintendent of Public Instruction on or before April 30, 2003. The Superintendent of Public Instruction shall announce Phase I planning grant awards by June 30, 2003, and the grants shall be awarded by August 1, 2003. The high school reform and redesign plans developed in Phase I of this program shall be submitted to the Superintendent of Public Instruction by June 30, 2004.

(b) Reform and redesign plans submitted by June 30, 2004, shall be evaluated by the Superintendent of Public Instruction and the Secretary for Education, in consultation with the advisory committee, using the criteria pursuant to subdivision (b) of Section 52071, as well as, all of the following criteria:

(1) Clear delineation of a five-year reform and redesign plan that, at minimum, contains all of the following:

(A) The specific actions necessary for the implementation of the reform and redesign plan.

(B) Specified benchmarks that demonstrate successful implementation of the reform and redesign plan over the five-year period.

(C) A five-year implementation timeline or schedule.

(D) A clear demonstration of linking existing reform efforts being implemented in the school district to ensure progress toward all of the following:

(i) Pupils being successful in the high school exit exam pursuant to Section 60850.

(ii) High schools meeting API growth targets pursuant to Section 52052.

(iii) High school pupils improving assessment scores pursuant to Section 60640.

(iv) Improved high school graduation rates.

(v) Decreasing high school pupil suspension and expulsion rates.

(2) A five-year expenditure and revenue budget for the implementation of the reform and redesign plan that includes, but is not limited to, the following:

(A) A one dollar ($1) match for every one dollar ($1) of grant funding received from the state.

(B) Projected annual cost for implementing of the five-year plan.

(C) Use of existing state and federal funds including, but not limited to, funds received under the Immediate Intervention/Underperforming Schools Program established by Article 3 (commencing with Section 52053) of Chapter 6.1, the High Priority Schools Grant Program contained in Article 3.5 (commencing with Section 52055.600) of Chapter 6.1, and Title I and the Comprehensive School Reform Program of the federal No Child Left Behind Act of 2001 (P.L. 107-110).

(3) A listing of indicators that measure annual progress linked to those elements of the plan described in subdivision (e) of Section 52070. These indicators shall include, but are not limited, to the following:

(A) Participating high schools meeting annual API growth targets.

(B) Students being successful in the high school exit exam.

(C) Improved high school pupil test scores as indicated on the annual assessments pursuant to Section 60640.

(D) Improved high school graduation rates.

(E) Decrease in high school student suspension and expulsion rates.

(c) The Superintendent of Public Instruction and Secretary for Education, in consultation with the advisory committee, may develop additional criteria for evaluating Phase I reform and redesign plans prior to Phase II implementation.

(d) School districts shall be notified no later than August 1, 2004, as to the acceptance of their reform and redesign plan for Phase II implementation.

52074. The Superintendent of Public Instruction and the Secretary for Education, in consultation with the advisory committee, shall work with private donors to secure adequate funding for an evaluation of this program. This evaluation shall be provided to the Legislature and the Governor by no later than January 1, 2009.

52075. This chapter shall remain in effect only until January 1, 2010, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2010, deletes or extends that date.

SEC. 3. The amount of one hundred thousand dollars ($100,000) is hereby appropriated from the General Fund to the Superintendent of Public Instruction, for the purposes of developing and administering the

request for proposal process to award grants under Chapter 6.6 (commencing with Section 52070) of Part 29 of the Education Code in the 2002–03 fiscal year.

CHAPTER 1029

An act to amend Sections 47, 1786.11, 1786.18, 1786.20, 1786.24, and 1786.50 of, and to add Section 1785.16.3 to the Civil Code, relating to personal information reporting, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 28, 2002. Filed with Secretary of State September 28, 2002.]

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

SECTION 1. Section 47 of the Civil Code is amended to read:

47. A privileged publication or broadcast is one made:

(a) In the proper discharge of an official duty.

(b) In any (1) legislative proceeding, (2) judicial proceeding, (3) in any other official proceeding authorized by law, or (4) in the initiation or course of any other proceeding authorized by law and reviewable pursuant to Chapter 2 (commencing with Section 1084) of Title 1 of Part 3 of the Code of Civil Procedure, except as follows:

(1) An allegation or averment contained in any pleading or affidavit filed in an action for marital dissolution or legal separation made of or concerning a person by or against whom no affirmative relief is prayed in the action shall not be a privileged publication or broadcast as to the person making the allegation or averment within the meaning of this section unless the pleading is verified or affidavit sworn to, and is made without malice, by one having reasonable and probable cause for believing the truth of the allegation or averment and unless the allegation or averment is material and relevant to the issues in the action.

(2) This subdivision does not make privileged any communication made in furtherance of an act of intentional destruction or alteration of physical evidence undertaken for the purpose of depriving a party to litigation of the use of that evidence, whether or not the content of the communication is the subject of a subsequent publication or broadcast which is privileged pursuant to this section. As used in this paragraph, ''physical evidence'' means evidence specified in Section 250 of the Evidence Code or evidence that is property of any type specified in Section 2031 of the Code of Civil Procedure.

(3) This subdivision does not make privileged any communication made in a judicial proceeding knowingly concealing the existence of an insurance policy or policies.

(4) A recorded lis pendens is not a privileged publication unless it identifies an action previously filed with a court of competent jurisdiction which affects the title or right of possession of real property, as authorized or required by law.

(c) In a communication, without malice, to a person interested therein, (1) by one who is also interested, or (2) by one who stands in such a relation to the person interested as to afford a reasonable ground for supposing the motive for the communication to be innocent, or (3) who is requested by the person interested to give the information. This subdivision applies to and includes a communication concerning the job performance or qualifications of an applicant for employment, based upon credible evidence, made without malice, by a current or former employer of the applicant to, and upon request of, one whom the employer reasonably believes is a prospective employer of the applicant. This subdivision authorizes a current or former employer, or the employer's agent, to answer whether or not the employer would rehire a current or former employee. This subdivision shall not apply to a communication concerning the speech or activities of an applicant for employment if the speech or activities are constitutionally protected, or otherwise protected by Section 527.3 of the Code of Civil Procedure or any other provision of law.

(d) (1) By a fair and true report in, or a communication to, a public journal, of (A) a judicial, (B) legislative, or (C) other public official proceeding, or (D) of anything said in the course thereof, or (E) of a verified charge or complaint made by any person to a public official, upon which complaint a warrant has been issued.

(2) Nothing in paragraph (1) shall make privileged any communication to a public journal that does any of the following:

(A) Violates Rule 5-120 of the State Bar Rules of Professional Conduct.

(B) Breaches a court order.

(C) Violates any requirement of confidentiality imposed by law.

(e) By a fair and true report of (1) the proceedings of a public meeting, if the meeting was lawfully convened for a lawful purpose and open to the public, or (2) the publication of the matter complained of was for the public benefit.

SEC. 2. Section 1785.16.3 is added to the Civil Code, to read:

1785.16.3. The provisions of subdivisions (k) and (*l*) of Section 1785.16 do not apply to a consumer reporting agency that acts only as a reseller of credit information by assembling and merging information contained in the database of another consumer reporting agency or

agencies, and that does not maintain a permanent database of credit information from which new credit reports are produced.

SEC. 3. Section 1786.11 of the Civil Code is amended to read:

1786.11. Every investigative consumer reporting agency that provides an investigative consumer report to a person other than the consumer shall make a copy of that report available, upon request and proper identification, to the consumer for at least two years after the date that the report is provided to the other person.

SEC. 4. Section 1786.18 of the Civil Code is amended to read:

1786.18. (a) Except as authorized under subdivision (b), an investigative consumer reporting agency may not make or furnish any investigative consumer report containing any of the following items of information:

(1) Bankruptcies that, from the date of adjudication, antedate the report by more than 10 years.

(2) Suits that, from the date of filing, and satisfied judgments that, from the date of entry, antedate the report by more than seven years.

(3) Unsatisfied judgments that, from the date of entry, antedate the report by more than seven years.

(4) Unlawful detainer actions where the defendant was the prevailing party or where the action is resolved by settlement agreement.

(5) Paid tax liens that, from the date of payment, antedate the report by more than seven years.

(6) Accounts placed for collection or charged to profit and loss that antedate the report by more than seven years.

(7) Records of arrest, indictment, information, misdemeanor complaint, or conviction of a crime that, from the date of disposition, release, or parole, antedate the report by more than seven years. These items of information shall no longer be reported if at any time it is learned that, in the case of a conviction, a full pardon has been granted or, in the case of an arrest, indictment, information, or misdemeanor complaint, a conviction did not result; except that records of arrest, indictment, information, or misdemeanor complaints may be reported pending pronouncement of judgment on the particular subject matter of those records.

(8) Any other adverse information that antedates the report by more than seven years.

(b) The provisions of subdivision (a) are not applicable in either of the following circumstances:

(1) If the investigative consumer report is to be used in the underwriting of life insurance involving, or that may reasonably be expected to involve, an amount of two hundred fifty thousand dollars ($250,000) or more.

(2) If the investigative consumer report is to be used by an employer who is explicitly required by a governmental regulatory agency to check for records that are prohibited by subdivision (a) when the employer is reviewing a consumer's qualification for employment.

(c) Except as otherwise provided in Section 1786.28, an investigative consumer reporting agency shall not furnish an investigative consumer report that includes information that is a matter of public record and that relates to an arrest, indictment, conviction, civil judicial action, tax lien, or outstanding judgment, unless the agency has verified the accuracy of the information during the 30-day period ending on the date on which the report is furnished.

(d) An investigative consumer reporting agency shall not prepare or furnish an investigative consumer report on a consumer that contains information that is adverse to the interest of the consumer and that is obtained through a personal interview with a neighbor, friend, or associate of the consumer or with another person with whom the consumer is acquainted or who has knowledge of the item of information, unless either (1) the investigative consumer reporting agency has followed reasonable procedures to obtain confirmation of the information, from an additional source that has independent and direct knowledge of the information, or (2) the person interviewed is the best possible source of the information.

SEC. 5. Section 1786.20 of the Civil Code is amended to read:

1786.20. (a) Every investigative consumer reporting agency shall maintain reasonable procedures designed to avoid violations of Section 1786.18 and to limit furnishing of investigative consumer reports for the purposes listed under Section 1786.12. These procedures shall require that prospective users of the information identify themselves, certify the purposes for which the information is sought and that the information will be used for no other purposes, and make the certifications described in paragraph (4) of subdivision (a) of Section 1786.16. From the effective date of this title, the investigative consumer reporting agency shall keep a record of the purposes for which information is sought, as stated by the user. The investigative consumer reporting agency may assume that the purpose for which a user seeks information remains the same as that which a user has previously stated. The investigative consumer reporting agency shall inform the user that the user is obligated to notify the agency of any change in the purpose for which information will be used. Every investigative consumer reporting agency shall make a reasonable effort to verify the identity of a new prospective user and the uses certified by the prospective user prior to furnishing the user any investigative consumer reports. No investigative consumer reporting agency may furnish any investigative consumer reports to any person unless it has a written agreement that the

investigative consumer reports will be used by that person only for purposes listed in Section 1786.12.

(b) Whenever an investigative consumer reporting agency prepares an investigative consumer report, it shall follow reasonable procedures to assure maximum possible accuracy of the information concerning the individual about whom the report relates. An investigative consumer reporting agency shall retain the investigative consumer report for a period of two years after the report is provided.

(c) An investigative consumer reporting agency shall not make an inquiry for the purpose of preparing an investigative consumer report on a consumer for employment purposes if the making of the inquiry by an employer or prospective employer of the consumer would violate any applicable federal or state equal employment opportunity law or regulation.

(d) Any investigative consumer reporting agency that violates this section shall be liable to the consumer affected in an amount not less than twenty-five thousand dollars ($25,000). In the case of a successful action to enforce liability under this section, a court may award the costs of the action together with reasonable attorney's fees as determined by the court.

SEC. 6. Section 1786.24 of the Civil Code is amended to read:

1786.24. (a) If the completeness or accuracy of any item of information contained in his or her file is disputed by a consumer, and the dispute is conveyed directly to the investigative consumer reporting agency by the consumer, the investigative consumer reporting agency shall, without charge, reinvestigate and record the current status of the disputed information or delete the item from the file in accordance with subdivision (c), before the end of the 30-day period beginning on the date on which the agency receives the notice of the dispute from the consumer.

(b) The agency shall notify any person who provided information in dispute at the address and in the manner specified by that person. The notice shall include all relevant information regarding the dispute that the investigative consumer reporting agency has received from the consumer. The agency shall also promptly provide to the person who provided the information in dispute all relevant information regarding the dispute that is received by the agency from the consumer during the reinvestigation.

(c) In conducting a reinvestigation, the investigative consumer reporting agency shall review and consider all relevant information submitted by the consumer with respect to the disputed item of information.

(d) Notwithstanding subdivision (a), an investigative consumer reporting agency may terminate a reinvestigation of information

disputed by a consumer if the investigative consumer reporting agency reasonably determines that the dispute is frivolous or irrelevant, including by reason of a failure by a consumer to provide sufficient information to investigate the disputed information. Upon making a determination that a dispute is frivolous or irrelevant, the investigative consumer reporting agency shall notify the consumer, by mail or, if authorized by the consumer for that purpose, by any other means available to the agency. In this notification, the investigative consumer reporting agency shall state the specific reasons why it has determined that the consumer's dispute is frivolous or irrelevant and provide a description of any information required to investigate the disputed information, that may consist of a standardized form describing the general nature of the required information.

(e) If a reinvestigation is made and, after reinvestigation, the disputed item of information is found to be inaccurate, incomplete, or cannot be verified by the evidence submitted, the investigative consumer reporting agency shall promptly delete that information from the consumer's file or modify the information, as appropriate, based on the results of the reinvestigation, and shall notify the consumer that the information has been deleted or modified. The consumer reporting agency shall also notify any and all sources from which the disputed information was obtained and inform them in writing of the reasons and results of the reinvestigation, and send a copy of this notification to the consumer.

(f) No information may be reinserted in a consumer's file after having been deleted pursuant to this section unless the person who furnished the information verifies that the information is complete and accurate. If any information deleted from a consumer's file is reinserted in the file, the investigative consumer reporting agency shall promptly notify the consumer of the reinsertion in writing or, if authorized by the consumer for that purpose, by any other means available to the agency. As part of, or in addition to, this notice, the investigative consumer reporting agency shall provide to the consumer in writing (1) a statement that the disputed information has been reinserted, (2) the name, address, and telephone number of any furnisher of information contacted or that contacted the investigative consumer reporting agency in connection with the reinsertion, and the telephone number of the furnisher, if reasonably available, and (3) a notice that the consumer has the right to a reinvestigation of the information reinserted by the investigative consumer reporting agency and to add a statement to his or her file disputing the accuracy or completeness of the information, except when the reinsertion results from the resolution of a prior dispute , and was made at the request of, or with the prior approval of, the consumer.

(g) An investigative consumer reporting agency shall provide notice to the consumer of the results of any reinvestigation under this section

by mail or, if authorized by the consumer for that purpose, by other means available to the agency. The notice shall include (1) a statement that the reinvestigation is completed, (2) an investigative consumer report that is based on the consumer's file as that file is revised as a result of the reinvestigation, (3) a description or indication of any changes made in the investigative consumer report as a result of those revisions to the consumer's file, (4) a notice that, if requested by the consumer, a description of the procedure used to determine the accuracy and completeness of the information shall be provided to the consumer by the investigative consumer reporting agency, including the name, business address, and telephone number of any furnisher of information contacted in connection with that information, (5) a notice that the consumer has the right to add a statement to the consumer's file disputing the accuracy or completeness of the information, and (6) a notice that the consumer has the right to request that the investigative consumer reporting agency furnish notifications under subdivision (k).

(h) The presence of information in the consumer's file that contradicts the contention of the consumer shall not, in and of itself, constitute reasonable grounds for believing the dispute is frivolous or irrelevant.

(i) If the investigative consumer reporting agency determines that the dispute is frivolous or irrelevant, or if the reinvestigation does not resolve the dispute, or if the information is reinserted into the consumer's file pursuant to subdivision (f), the consumer may file a brief statement setting forth the nature of the dispute. The investigative consumer reporting agency may limit these statements to not more than 500 words if it provides the consumer with assistance in writing a clear summary of the dispute.

(j) Whenever a statement of dispute is filed, the investigative consumer reporting agency shall, in any subsequent investigative consumer report containing the information in question, clearly note that the information is disputed by the consumer and shall include in the report either the consumer's statement or a clear and accurate summary thereof.

(k) Following the deletion of information from a consumer's file pursuant to this section, or following the filing of a dispute pursuant to subdivision (i), the investigative consumer reporting agency shall, at the request of the consumer, furnish notification that the item of information has been deleted or that the item of information is disputed. In the case of disputed information, the notification shall include the statement or summary of the dispute filed pursuant to subdivision (i). This notification shall be furnished to any person, specifically designated by the consumer, who has, within two years prior to the deletion or the filing of the dispute, received an investigative consumer report concerning the

consumer for employment purposes, or who has, within one year of the deletion or the filing of the dispute, received an investigative consumer report concerning the consumer for any other purpose, if these investigative consumer reports contained the deleted or disputed information. The investigative consumer reporting agency shall clearly and conspicuously disclose to the consumer his or her rights to make a request for this notification.

(*l*) An investigative consumer reporting agency shall maintain reasonable procedures designed to prevent the reappearance in a consumer's file and in investigative consumer reports information that has been deleted pursuant to this section and not reinserted pursuant to subdivision (f).

(m) If the consumer's dispute is resolved by deletion of the disputed information within three business days, beginning with the day the investigative consumer reporting agency receives notice of the dispute in accordance with subdivision (a), the investigative consumer reporting agency shall be exempt from requirements for further action under subdivisions (g), (i), and (j), if the agency: (1) provides prompt notice of the deletion to the consumer by telephone, (2) provides written confirmation of the deletion and a copy of an investigative consumer report of the consumer that is based on the consumer's file after the deletion, and (3) includes, in the telephone notice or in a written notice that accompanies the confirmation and report, a statement of the consumer's right to request under subdivision (k) that the agency furnish notifications under that subdivision.

(n) Any investigative consumer reporting agency that compiles and maintains files on consumers on a nationwide basis, as defined in the federal Fair Credit Reporting Act, as amended (15 U.S.C. Sec. 1681 et seq.), shall implement an automated system through which furnishers of information to that agency may report the results of a reinvestigation that finds incomplete or inaccurate information in a consumer's file to other investigative consumer reporting agencies.

(o) All actions to be taken by an investigative consumer reporting agency under this section are governed by the applicable time periods specified in Section 611 of the federal Fair Credit Reporting Act, as amended (15 U.S.C. Sec. 1681i).

SEC. 7. Section 1786.50 of the Civil Code is amended to read:

1786.50. (a) An investigative consumer reporting agency or user of information that fails to comply with any requirement under this title, except for the requirements of Section 1786.20, with respect to an investigative consumer report is liable to the consumer who is the subject of the report in an amount equal to the sum of all the following:

(1) Any actual damages sustained by the consumer as a result of the failure or, except in the case of class actions, ten thousand dollars ($10,000), whichever sum is greater.

(2) In the case of any successful action to enforce any liability under this chapter, the costs of the action together with reasonable attorney's fees as determined by the court.

(b) If the court determines that the violation was grossly negligent or willful, the court may, in addition, assess, and the consumer may recover, punitive damages.

(c) Notwithstanding subdivision (a), an investigative consumer reporting agency or user of information that fails to comply with any requirement under this title with respect to an investigative consumer report shall not be liable to a consumer who is the subject of the report where the failure to comply results in a more favorable investigative consumer report than if there had not been a failure to comply.

SEC. 8. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to clarify confusion over the operational provisions of Chapter 354 of the Statutes of 2001, and further protect consumer interests in relation to credit information and identity theft, it is necessary that this act take immediate effect.

CHAPTER 1030

An act to amend Sections 1785.16.2, 1785.20.3, 1786.16, 1786.24, 1786.29, and 1786.53 of, and to add Sections 1786.40, 1786.55, and 1786.60 to, the Civil Code, relating to personal information, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 28, 2002. Filed with Secretary of State September 28, 2002.]

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

SECTION 1. Section 1785.16.2 of the Civil Code is amended to read:

1785.16.2. (a) No creditor may sell a consumer debt to a debt collector, as defined in 15 U.S.C. Sec. 1692a, if the consumer is a victim of identity theft, as defined in Section 1798.2, and with respect to that debt, the creditor has received notice pursuant to subdivision (k) of Section 1785.16.

(b) Subdivision (a) does not apply to a creditor's sale of a debt to a subsidiary or affiliate of the creditor, if, with respect to that debt, the subsidiary or affiliate does not take any action to collect the debt.

(c) For the purposes of this section, the requirement in 15 U.S.C. Sec. 1692a, that a person must use an instrumentality of interstate commerce or the mails in the collection of any debt to be considered a debt collector, does not apply.

SEC. 2. Section 1785.20.3 of the Civil Code is amended to read:

1785.20.3. (a) Any person who uses a consumer credit report in connection with the approval of credit based on an application for an extension of credit, and who discovers that the address on the credit application does not match, within a reasonable degree of certainty, the address or addresses listed, if any, on the consumer credit report, shall take reasonable steps to verify the accuracy of the address provided on the application to confirm that the extension of credit is not the result of identity theft, as defined in Section 1798.92.

(b) Any person who uses a consumer credit report in connection with the approval of credit based on an application for an extension of credit, and who has received notification pursuant to subdivision (k) of Section 1785.16 that the applicant has been a victim of identity theft, as defined in Section 1798.92, may not lend money or extend credit without taking reasonable steps to verify the consumer's identity and confirm that the application for an extension of credit is not the result of identity theft.

(c) Any consumer who suffers damages as a result of a violation of this section by any person may bring an action in a court of appropriate jurisdiction against that person to recover actual damages, court costs, attorney's fees, and punitive damages of not more than thirty thousand dollars ($30,000) for each violation, as the court deems proper.

(d) As used in this section, ''identity theft'' has the meaning given in subdivision (b) of Section 1798.92.

(e) For the purposes of this section, ''extension of credit'' does not include an increase in an existing open-end credit plan, as defined in Regulation Z of the Federal Reserve System (12 C.F.R. 226.2), or any change to or review of an existing credit account.

(f) If a consumer provides initial written notice to a creditor that he or she is a victim of identity theft, as defined in subdivision (d) of Section 1798.92, the creditor shall provide written notice to the consumer of his or her rights under subdivision (k) of Section 1785.16.

(g) The provisions of subdivisions (k) and (*l*) of Section 1785.16 do not apply to a consumer credit reporting agency that acts only as a reseller of credit information by assembling and merging information contained in the database of another consumer credit reporting agency or the databases of multiple consumer credit reporting agencies, and

does not maintain a permanent database of credit information from which new credit reports are produced.

(h) This section does not apply if one of the addresses at issue is a United States Army or Air Force post office address or a United States Fleet post office address.

SEC. 3. Section 1786.16 of the Civil Code is amended to read:

1786.16. (a) Any person described in subdivision (d) of Section 1786.12 shall not procure or cause to be prepared an investigative consumer report unless the following applicable conditions are met:

(1) If an investigative consumer report is sought in connection with the underwriting of insurance, it shall be clearly and accurately disclosed in writing at the time the application form, medical form, binder, or similar document is signed by the consumer that an investigative consumer report regarding the consumer's character, general reputation, personal characteristics, and mode of living may be made. If no signed application form, medical form, binder, or similar document is involved in the underwriting transaction, the disclosure shall be made to the consumer in writing and mailed or otherwise delivered to the consumer not later than three days after the report was first requested. The disclosure shall include the name and address of any investigative consumer reporting agency conducting an investigation, plus the nature and scope of the investigation requested, and a summary of the provisions of Section 1786.22.

(2) If, at any time, an investigative consumer report is sought for employment purposes other than suspicion of wrongdoing or misconduct by the subject of the investigation, the person seeking the investigative consumer report may procure the report, or cause the report to be made, only if all of the following apply:

(A) The person procuring or causing the report to be made has a permissible purpose, as defined in Section 1786.12.

(B) The person procuring or causing the report to be made provides a clear and conspicuous disclosure in writing to the consumer at any time before the report is procured or caused to be made in a document that consists solely of the disclosure, that:

(i) An investigative consumer report may be obtained.

(ii) The permissible purpose of the report is identified.

(iii) The disclosure may include information on the consumer's character, general reputation, personal characteristics, and mode of living.

(iv) Identifies the name, address, and telephone number of the investigative consumer reporting agency conducting the investigation.

(v) Notifies the consumer in writing of the nature and scope of the investigation requested, including a summary of the provisions of Section 1786.22.

(C) The consumer has authorized in writing the procurement of the report.

(3) If an investigative consumer report is sought in connection with the hiring of a dwelling unit, as defined in subdivision (c) of Section 1940, the person procuring or causing the request to be made shall, not later than three days after the date on which the report was first requested, notify the consumer in writing that an investigative consumer report will be made regarding the consumer's character, general reputation, personal characteristics, and mode of living. The notification shall also include the name and address of the investigative consumer reporting agency that will prepare the report and a summary of the provisions of Section 1786.22.

(4) The person procuring or causing the request to be made shall certify to the investigative consumer reporting agency that the person has made the applicable disclosures to the consumer required by this subdivision and that the person will comply with subdivision (b).

(5) The person procuring the report or causing it to be prepared agrees to provide a copy of the report to the subject of the investigation, as provided in subdivision (b).

(b) Any person described in subdivision (d) of Section 1786.12 who requests an investigative consumer report, in accordance with subdivision (a) regarding that consumer, shall do the following:

(1) Provide the consumer a means by which the consumer may indicate on a written form, by means of a box to check, that the consumer wishes to receive a copy of any report that is prepared. If the consumer wishes to receive a copy of the report, the recipient of the report shall send a copy of the report to the consumer within three business days of the date that the report is provided to the recipient, who may contract with any other entity to send a copy to the consumer. The notice to request the report may be contained on either the disclosure form, as required by subdivision (a), or a separate consent form. The copy of the report shall contain the name, address, and telephone number of the person who issued the report and how to contact them.

(2) Comply with Section 1786.40, if the taking of adverse action is a consideration.

(c) Subdivisions (a) and (b) do not apply to an investigative consumer report procured or caused to be prepared by an employer, if the report is sought for employment purposes due to suspicion held by an employer of wrongdoing or misconduct by the subject of the investigation.

(d) Those persons described in subdivision (d) of Section 1786.12 constitute the sole and exclusive class of persons who may cause an investigative consumer report to be prepared.

SEC. 4. Section 1786.24 of the Civil Code is amended to read:

1786.24. (a) If the completeness or accuracy of any item of information contained in his or her file is disputed by a consumer, and the dispute is conveyed directly to the investigative consumer reporting agency by the consumer, the investigative consumer reporting agency shall, without charge, reinvestigate and record the current status of the disputed information or delete the item from the file in accordance with subdivision (c), before the end of the 30-day period beginning on the date on which the agency receives the notice of the dispute from the consumer.

(b) The agency shall notify any person who provided information in dispute at the address and in the manner specified by that person. The notice shall include all relevant information regarding the dispute that the investigative consumer reporting agency has received from the consumer. The agency shall also promptly provide to the person who provided the information in dispute all relevant information regarding the dispute that is received by the agency from the consumer during the reinvestigation.

(c) In conducting a reinvestigation, the investigative consumer reporting agency shall review and consider all relevant information submitted by the consumer with respect to the disputed item of information.

(d) Notwithstanding subdivision (a), an investigative consumer reporting agency may terminate a reinvestigation of information disputed by a consumer if the investigative consumer reporting agency reasonably determines that the dispute is frivolous or irrelevant, including by reason of a failure by a consumer to provide sufficient information to investigate the disputed information. Upon making a determination that a dispute is frivolous or irrelevant, the investigative consumer reporting agency shall notify the consumer, by mail or, if authorized by the consumer for that purpose, by any other means available to the agency. In this notification, the investigative consumer reporting agency shall state the specific reasons why it has determined that the consumer's dispute is frivolous or irrelevant and provide a description of any information required to investigate the disputed information, that may consist of a standardized form describing the general nature of the required information.

(e) If a reinvestigation is made and, after reinvestigation, the disputed item of information is found to be inaccurate, incomplete, or cannot be verified by the evidence submitted, the investigative consumer reporting agency shall promptly delete that information from the consumer's file or modify the information, as appropriate, based on the results of the reinvestigation, and shall notify the consumer that the information has been deleted or modified. The consumer reporting agency shall also notify any and all sources from which the disputed information was

obtained and inform them in writing of the reasons and results of the reinvestigation, and send a copy of this notification to the consumer. In accordance with subdivision (b) of Section 1786.10, the copy of the notification sent to the consumer need not reveal the identity of the source of information, unless otherwise required by law.

(f) No information may be reinserted in the file of a consumer after having been deleted pursuant to this section, unless the person who furnished the information verifies that the information is complete and accurate. If any information deleted from the file of a consumer is reinserted in the file, the investigative consumer reporting agency shall promptly notify the consumer of the reinsertion in writing or, if authorized by the consumer for that purpose, by any other means available to the agency. As part of, or in addition to, this notice, the investigative consumer reporting agency shall provide to the consumer in writing (1) a statement that the disputed information has been reinserted, (2) the name, address, and telephone number of any furnisher of information contacted or that contacted the investigative consumer reporting agency in connection with the reinsertion, and the telephone number of the furnisher, if reasonably available, and (3) a notice that the consumer has the right to a reinvestigation of the information reinserted by the investigative consumer reporting agency and to add a statement to his or her file disputing the accuracy or completeness of the information.

(g) An investigative consumer reporting agency shall provide notice to the consumer of the results of any reinvestigation under this section by mail or, if authorized by the consumer for that purpose, by other means available to the agency. The notice shall include (1) a statement that the reinvestigation is completed, (2) an investigative consumer report that is based on the consumer's file as that file is revised as a result of the reinvestigation, (3) a description or indication of any changes made in the investigative consumer report as a result of those revisions to the consumer's file, (4) a notice that, if requested by the consumer, a description of the procedure used to determine the accuracy and completeness of the information shall be provided to the consumer by the investigative consumer reporting agency, including the name, business address, and telephone number of any furnisher of information contacted in connection with that information, (5) a notice that the consumer has the right to add a statement to the consumer's file disputing the accuracy or completeness of the information, and (6) a notice that the consumer has the right to request that the investigative consumer reporting agency furnish notifications under subdivision (k).

(h) The presence of information in the consumer's file that contradicts the contention of the consumer shall not, in and of itself,

constitute reasonable grounds for believing the dispute is frivolous or irrelevant.

(i) If the investigative consumer reporting agency determines that the dispute is frivolous or irrelevant, or if the reinvestigation does not resolve the dispute, or if the information is reinserted into the file of a consumer pursuant to subdivision (f), the consumer may file a brief statement setting forth the nature of the dispute. The investigative consumer reporting agency may limit these statements to not more than 500 words if it provides the consumer with assistance in writing a clear summary of the dispute.

(j) If a statement of dispute is filed, the investigative consumer reporting agency shall, in any subsequent investigative consumer report containing the information in question, clearly note that the information is disputed by the consumer and shall include in the report either the statement of the consumer or a clear and accurate summary thereof.

(k) Following the deletion of information from the file of a consumer pursuant to this section, or following the filing of a dispute pursuant to subdivision (i), the investigative consumer reporting agency shall, at the request of the consumer, furnish notification that the item of information has been deleted or that the item of information is disputed. In the case of disputed information, the notification shall include the statement or summary of the dispute filed pursuant to subdivision (i). This notification shall be furnished to any person who has, within two years prior to the deletion or the filing of the dispute, received an investigative consumer report concerning the consumer for employment purposes, or who has, within one year of the deletion or the filing of the dispute, received an investigative consumer report concerning the consumer for any other purpose, if these investigative consumer reports contained the deleted or disputed information, unless the consumer specifically requests in writing, that this notification not be given to all persons or to any specified persons. The investigative consumer reporting agency shall clearly and conspicuously disclose to the consumer his or her rights to make a request that this notification not be made.

(*l*) An investigative consumer reporting agency shall maintain reasonable procedures designed to prevent the reappearance in the file of a consumer and in investigative consumer reports information that has been deleted pursuant to this section and not reinserted pursuant to subdivision (f).

(m) If the the dispute of a consumer is resolved by deletion of the disputed information within three business days, beginning with the day the investigative consumer reporting agency receives notice of the dispute in accordance with subdivision (a), the investigative consumer reporting agency is exempt from requirements for further action under subdivisions (g), (i), and (j), if the agency: (1) provides prompt notice

of the deletion to the consumer by telephone, (2) provides written confirmation of the deletion and a copy of an investigative consumer report of the consumer that is based on the file of a consumer after the deletion, and (3) includes, in the telephone notice or in a written notice that accompanies the confirmation and report, a statement of the consumer's right to request under subdivision (k) that the agency not furnish notifications under that subdivision.

(n) Any investigative consumer reporting agency that compiles and maintains files on consumers on a nationwide basis, as defined in the federal Fair Credit Reporting Act, as amended (15 U.S.C. Sec. 1681 et seq.), shall implement an automated system through which furnishers of information to that agency may report the results of a reinvestigation that finds incomplete or inaccurate information in the file of a consumer to other investigative consumer reporting agencies.

(o) All actions to be taken by an investigative consumer reporting agency under this section are governed by the applicable time periods specified in Section 611 of the federal Fair Credit Reporting Act, as amended (15 U.S.C. Sec. 1681i).

SEC. 5. Section 1786.29 of the Civil Code is amended to read:

1786.29. An investigative consumer reporting agency shall provide the following notices on the first page of an investigative consumer report:

(a) A notice in at least 12-point boldface type setting forth that the report does not guarantee the accuracy or truthfulness of the information as to the subject of the investigation, but only that it is accurately copied from public records, and information generated as a result of identity theft, including evidence of criminal activity, may be inaccurately associated with the consumer who is the subject of the report.

(b) An investigative consumer reporting agency shall provide a consumer seeking to obtain a copy of a report or making a request to review a file, a written notice in simple, plain English and Spanish setting forth the terms and conditions of his or her right to receive all disclosures, as provided in Section 1786.26.

SEC. 6. Section 1786.40 is added to the Civil Code, to read:

1786.40. (a) Whenever insurance for personal, family, or household purposes, employment, or the hiring of a dwelling unit involving a consumer is denied, or the charge for that insurance or the hiring of a dwelling unit is increased, under circumstances in which a report regarding the consumer was obtained from an investigative consumer reporting agency, the user of the investigative consumer report shall so advise the consumer against whom the adverse action has been taken and supply the name and address of the investigative consumer reporting agency making the report.

(b) Whenever insurance for personal, family, or household purposes involving a consumer is denied or the charge for that insurance is increased, either wholly or in part because of information bearing upon the consumer's general reputation, personal characteristics, or mode of living, that was obtained from a person other than an investigative consumer reporting agency, the consumer, or another person related to the consumer and acting on the consumer's behalf, the user of the information shall, within a reasonable period of time, and upon the consumer's written request for the reasons for the adverse action received within 60 days after learning of the adverse action, disclose the nature and substance of the information to the consumer. The user of the information shall clearly and accurately disclose to the consumer his or her right to make this written request at the time the adverse action is communicated to the consumer.

SEC. 7. Section 1786.53 of the Civil Code is amended to read:

1786.53. (a) Any person who collects, assembles, evaluates, compiles, reports, transmits, transfers, or communicates information on a consumer's character, general reputation, personnel characteristics, or mode of living, for employment purposes, which are matters of public record, and does not use the services of an investigative consumer reporting agency, shall provide that information to the consumer pursuant to subdivision (b). For purposes of this section:

(1) ''Adverse action,'' as relating to employment, means a denial of employment or any decision made for an employment purpose that adversely affects any current or prospective employee.

(2) The term ''person'' does not include an agency subject to the Information Practices Act of 1977 (Chapter 1 (commencing with Section 1798) of Title 1.8).

(3) ''Public records'' means records documenting an arrest, indictment, conviction, civil judicial action, tax lien, or outstanding judgment.

(b) (1) Any person described in subdivision (a), or any person who receives information pursuant to subdivision (a), shall provide a copy of the related public record to the consumer within seven days after receipt of the information, regardless of whether the information is received in a written or oral form.

(2) Any person shall provide on any job application form, or any other written form, a box that, if checked by the consumer, permits the consumer to waive his or her right to receive a copy of any public record obtained pursuant to this section.

(3) If any person obtains a public record pursuant to this section for the purpose of conducting an investigation for suspicion of wrongdoing or misconduct by the subject of the investigation, the person may withhold the information until the completion of the investigation. Upon

completion, the person shall provide a copy of the public record pursuant to paragraph (1), unless the consumer waived his or her rights pursuant to paragraph (2).

(4) If any person takes any adverse action as a result of receiving information pursuant to subdivision (a), the person shall provide to the consumer a copy of the public record, regardless of whether the consumer waived his or her rights pursuant to paragraph (2).

(c) Nothing in subdivision (a) or (b) requires any person to provide the same information to any consumer on more than one occasion.

SEC. 8. Section 1786.55 is added to the Civil Code, to read:

1786.55. Nothing in this chapter is intended to modify Section 1198.5 of the Labor Code or existing law concerning information obtained by an employer or employment agency without the use of the services of an investigative consumer reporting agency for employment reference checks, background investigations, credential verifications, or employee investigations, except as provided in Section 1786.53. Nothing in this chapter is intended to change or supersede existing law related to privileged attorney-client communications or attorney work product, or require the production or disclosure of that information.

SEC. 9. Section 1786.60 is added to the Civil Code, to read:

1786.60. Notwithstanding subdivision (a) of Section 1798.85, prior to July 1, 2003, any financial institution may print the social security number of an individual on any account statement or similar document mailed to that individual, if the social security number is provided in connection with a transaction governed by the rules of the National Automated Clearing House Association, or a transaction initiated by a federal governmental entity through an automated clearing house network.

SEC. 10. The changes made by this act to subdivision (f) of Section 1785.20.3 of the Civil Code shall become operative 90 days after the effective date of this act.

SEC. 11. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to clarify confusion over the operational provisions of Chapter 354 of the Statutes of 2001, and further protect consumer interests in relation to credit information and identity theft, it is necessary that this act take immediate effect.

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CHAPTER 1031

An act to amend Section 5627 of, and to add and repeal Section 35033.5 to, the Public Resources Code, relating to natural resources, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 28, 2002. Filed with Secretary of State September 28, 2002.]

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

SECTION 1. Section 5627 of the Public Resources Code is amended to read:

5627. (a) Grant moneys received pursuant to this chapter shall be expended for high priority projects that satisfy the most urgent park and recreation needs, with emphasis on unmet needs in the most heavily populated and most economically disadvantaged areas within each jurisdiction.

(b) Grants received pursuant to this chapter shall be expended only for acquisition, development, or both, except that not more than 30 percent of the amount received by a city, county, or district in an annual period may be utilized for special major maintenance projects, provided the projects are related to land acquired or developed, or both, in whole or in part, with state moneys under this chapter, or for innovative recreation programs, or for both.

(c) Grants to cities, counties, and districts pursuant to this chapter shall be on the basis of 70 percent state money and 30 percent local matching money, not less than one-third of which shall be from private or nonstate sources of funds, for the project. Grants for acquisition shall be matched only by money or property donated to be part of the acquisition project. Grants for development may be matched by monetary contributions or, if nonmonetary contributions, as provided in regulations and standards which shall be established by the director after a public hearing. The component of local matching money consisting of funds from private or nonstate sources may, at the option of the grant recipient, be calculated as a percentage of the total amount granted in that fiscal year to a grant recipient, rather than on a project-by-project basis.

(d) The component of local matching money from private or nonstate sources required by subdivision (c) may be in the form of and include, but is not limited to, the following: cash donations, gifts of real property, equipment, and consumable supplies, volunteer services, free or reduced-cost use of lands, facilities, or equipment, and bequests and earnings from wills, estates, and trusts. Funds from nonstate sources that qualify for the purposes of subdivision (c) are funds from the federal government and local public agencies other than the grant recipient. Real

property, cash, or other assets required to be transferred to a public agency pursuant to Section 66477 of the Government Code or any other provision of law shall not qualify as funds from a private or nonstate source; however, they shall qualify as the monetary or nonmonetary contribution required to be furnished by the grant recipient pursuant to subdivision (c).

(e) The grant recipient shall certify to the department that there is available, or will become available prior to the encumbrance of any state funds for any work on the project for which application for a grant has been made, matching money from private or nonstate sources. Certification of the source and amount of nonstate funds shall be set forth in the application for a grant submitted to the department. However, in recognition of the fact that raising private funds frequently requires an initial evidence of matching public funds, the certification of the source and amount of the private funds shall be made by the applicant at least 30 days prior to actual release of state funds.

(f) Local matching money shall not be required with respect to an applicant that has urgent unmet needs for recreational lands or facilities, and lacks the financial resources to acquire or develop recreational lands or facilities, as determined pursuant to a formula set forth in regulations adopted by the director after a public hearing. In addition, with respect to applications for grants submitted for areas where private financial resources are of limited availability or submitted for projects or programs that are not of a type likely to attract private funds, the director shall, if the project conforms to regulations adopted by the department, waive the requirement that at least one-third of local matching money be from private sources. The regulations shall establish criteria and procedures for the waiver. These criteria may provide for consideration of the average per capita income, unemployment rate, crime rate, and recent history of plant or business closures in the area of the applicant's jurisdiction where the grant will be expended.

SEC. 2. Section 35033.5 is added to the Public Resources Code, to read:

35033.5. (a) Notwithstanding Section 35033 or any other provision of law, funds received by the state pursuant to Section 8(g) of the Outer Continental Shelf Lands Act (43 U.S.C. Sec. 1337(g)) in an amount greater than the amount of the funds received in the 1996 calendar year from that source may not be allocated to or by the secretary for grants to coastal counties and cities pursuant to this chapter for the fiscal year 2002–03.

(b) This section shall remain in effect only until January 1, 2004, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2004, deletes or extends that date.

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

In order to make statutory changes necessary to alleviate the effects of the budget deficit facing this state at the earliest possible time, it is necessary that this act take effect immediately.

CHAPTER 1032

An act to amend Sections 35179.2, 35291, 35291.5, 48209.1, 48209.9, 48209.10, 48209.11, 48209.12, 48209.13, 48209.14, and 48209.15 of, to repeal Article 1 (commencing with Section 44670.1) and Article 2 (commencing with Section 44680) of Chapter 3.1 of Part 25 of, to repeal Chapter 4 (commencing with Section 58600) of Part 31 of, and to repeal Section 62000.5 of, the Education Code, and to add Section 3024 to the Elections Code, relating to education, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 28, 2002. Filed with Secretary of State September 28, 2002.]

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

SECTION 1. Section 35179.2 of the Education Code is amended to read:

35179.2. (a) Subject to funds being appropriated for this purpose in the annual Budget Act, 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. 2. Section 35291 of the Education Code is amended to read:

35291. The governing board of any school district shall prescribe rules not inconsistent with law or with the rules prescribed by the State Board of Education, for the government and discipline of the schools under its jurisdiction. The governing board of each school district which maintains any of grades 1 through 12, inclusive, may, at the time and in the manner prescribed by Sections 48980 and 48981, notify the parent or guardian of all pupils registered in schools of the district of the availability of rules of the district pertaining to student discipline.

SEC. 3. Section 35291.5 of the Education Code is amended to read:

35291.5. (a) On or before December 1, 1987, and at least every four years thereafter, each public school may, at its discretion, adopt rules and procedures on school discipline applicable to the school. For schools that choose to adopt rules pursuant to this article, the school discipline rules and procedures shall be consistent with any applicable policies adopted by the governing board and state statutes governing school discipline. In developing these rules and procedures, each school shall solicit the participation, views, and advice of one representative selected by each of the following groups:

(1) Parents.

(2) Teachers.

(3) School administrators.

(4) School security personnel, if any.

(5) For junior high schools and high schools, pupils enrolled in the school.

Meetings for the development of the rules and procedures should be developed and held within the school's existing resources, during nonclassroom hours, and on normal schooldays.

The final version of the rules and procedures on school discipline with attendant regulations may be adopted by a panel comprised of the principal of the school, or his or her designee, and a representative selected by classroom teachers employed at the school.

It shall be the duty of each employee of the school to enforce the rules and procedures on school discipline adopted under this section.

(b) The governing board of each school district may prescribe procedures to provide written notice to continuing pupils at the beginning of each school year and to transfer pupils at the time of their enrollment in the school and to their parents or guardians regarding the school discipline rules and procedures adopted pursuant to subdivision (a).

(c) Each school may file a copy of its school discipline rules and procedures with the district superintendent of schools and governing board on or before January 1, 1988.

(d) The governing board may review, at an open meeting, the approved school discipline rules and procedures for consistency with governing board policy and state statutes.

SEC. 4. Article 1 (commencing with Section 44670.1) of Chapter 3.1 of Part 25 of the Education Code is repealed.

SEC. 5. Article 2 (commencing with Section 44680) of Chapter 3.1 of Part 25 of the Education Code is repealed.

SEC. 6. Section 48209.1 of the Education Code is amended to read:

48209.1. (a) The governing board of any school district may accept interdistrict transfers. No school district that receives an application for attendance under this article is required to admit pupils to its schools. If, however, the governing board elects to accept transfers as authorized under this article, it may, by resolution, elect to accept transfer pupils, determine and adopt the number of transfers it is willing to accept under this article, and ensure that pupils admitted under the policy are selected through a random, unbiased process that prohibits an evaluation of whether or not the pupil should be enrolled based upon his or her academic or athletic performance. Any pupil accepted for transfer shall be deemed to have fulfilled the requirements of Section 48204.

(b) Either the pupil's school district of residence, upon notification of the pupil's acceptance to the school district of choice pursuant to subdivision (c) of Section 48209.9, or the school district of choice may prohibit the transfer of a pupil under this article or limit the number of pupils so transferred if the governing board of the district determines that the transfer would negatively impact any of the following:

(1) The court-ordered desegregation plan of the district.

(2) The voluntary desegregation plan of the district that meets the criteria of Section 42249.

(3) The racial and ethnic balance of the district.

(c) The school district of residence shall not adopt policies that in any way block or discourage pupils from applying for transfer to another district.

SEC. 7. Section 48209.9 of the Education Code is amended to read:

48209.9. (a) Commencing January 1, 1994, any application for transfer under this article shall be submitted by the pupil's parent or guardian to the school district of choice that has elected to accept transfer pupils pursuant to Section 48209.1 prior to January 1 of the school year preceding the school year for which the pupil is to be transferred. This application deadline may be waived upon agreement of the pupil's school district of residence and the school district of choice.

(b) The application may be submitted on a form provided for this purpose by the State Department of Education and may request enrollment of the pupil in a specific school or program of the district.

(c) Not later than 90 days after the receipt by a school district of an application for transfer, the governing board of the district may notify the parent or guardian in writing whether the application has been provisionally accepted or rejected or of the pupil's position on any waiting list. Final acceptance or rejection shall be made by May 15 preceding the school year for which the pupil is to be transferred. In the event of an acceptance, that notice may be provided also to the school district of residence. If the application is rejected, the district governing board may set forth in the written notification to the parent or guardian the specific reason or reasons for that determination, and shall ensure that the determination, and the specific reason or reasons therefor, are accurately recorded in the minutes of a regularly scheduled board meeting in which the determination was made.

(d) Final acceptance of the transfer is applicable for one school year and will be renewed automatically each year unless the school district of choice through the adoption of a resolution withdraws from participation in the program and no longer will accept any transfer pupils from other districts. However, if a school district of choice withdraws from participation in the program, high school pupils admitted under this article may continue until they graduate from high school.

SEC. 8. Section 48209.10 of the Education Code is amended to read:

48209.10. (a) Any school district of choice that admits any pupil under this section may accept any completed coursework, attendance, and other academic progress credited to that pupil by the school district or districts previously attended by that pupil, and shall grant academic standing to that pupil.

(b) Any school district of choice that admits a pupil under this section may revoke the pupil's transfer if the pupil is recommended for expulsion pursuant to Section 48918.

SEC. 9. Section 48209.11 of the Education Code is amended to read:

48209.11. (a) The average daily attendance for pupils admitted by a school district of choice pursuant to this article shall be credited to that district pursuant to Section 46607. The attendance report for the school district of choice may include an identification of the school district of residence.

(b) Notwithstanding other provisions of law, state aid for categorical education programs for pupils admitted under this article shall be apportioned to the school district of choice.

(c) For any school district of choice that is a basic aid district the Superintendent of Public Instruction, commencing with the 1995–96 fiscal year, shall calculate for that basic aid district an apportionment of state funds that provides 70 percent of the district revenue limit calculated pursuant to Section 42238 that would have been apportioned to the school district of residence for any average daily attendance credited pursuant to this section. For purposes of this subdivision, the term ''basic aid district'' means a school district that does not receive from the state, for any fiscal year in which the subdivision is applied, an apportionment of state funds pursuant to subdivision (h) of Section 42238.

(d) The State Allocation Board shall develop procedures to ensure that the average daily attendance of pupils admitted by a school district of choice pursuant to this article shall be credited to that school district for the purposes of any determination under Chapter 22 (commencing with Section 17700) of Part 10 that utilizes an average daily attendance calculation.

SEC. 10. Section 48209.12 of the Education Code is amended to read:

48209.12. Upon request of the pupil's parent or guardian, each school district of choice that admits a pupil under this section to any school or program of the district may provide to the pupil transportation assistance within the boundaries of the district to that school or program, to the extent that the district otherwise provides transportation assistance to pupils.

SEC. 11. Section 48209.13 of the Education Code is amended to read:

48209.13. Each school district may make information regarding its schools, programs, policies, and procedures available to any interested person upon request.

SEC. 12. Section 48209.14 of the Education Code is amended to read:

48209.14. (a) Pursuant to this article, each school district may keep an accounting of all requests made for alternative attendance and records of all disposition of those requests that may include, but are not to be limited to, all of the following:

(1) The number of requests granted, denied, or withdrawn. In the case of denied requests, the records may indicate the reasons for the denials.

(2) The number of pupils transferred out of the district.

(3) The number of pupils transferred into the districts.

(b) The information maintained pursuant to subdivision (a) may be reported to the governing board of the school district at regularly scheduled meeting of the governing board. If the information is reported to the governing board of the school district, the information shall be

reported to the Superintendent of Public Instruction no later than January 1, 1996, and annually thereafter, and the superintendent shall make the information available to the Governor, the Legislature, and the public.

SEC. 14. Section 48209.15 of the Education Code is amended to read:

48209.15. (a) It is the intent of the Legislature that every parent in this state be informed of their opportunity for currently existing choice options under this article regardless of ethnicity, primary language, or literacy.

(b) Notwithstanding Section 48980, before the beginning of the first semester or quarter of the regular school term, each county board of education may, to the extent that funding is provided for the purposes of this section, adopt a plan to conduct an aggressive, focused outreach program that meets the intent of this section.

SEC. 15. Chapter 4 (commencing with Section 58600) of Part 31 of the Education Code is repealed.

SEC. 16. Section 62000.5 of the Education Code is repealed.

SEC. 17. Section 3024 is added to the Elections Code, to read:

3024. The cost to administer absentee ballots where issues and elective offices related to school districts, as defined by Section 17519 of the Government Code, are included on a ballot election with noneducation issues and elective offices shall not be fully or partially prorated to a school district. The Commission on State Mandates shall delete school districts, county boards of education, and community college districts from the list of eligible claimants in the Parameters and Guidelines for the Absentee Ballot Mandates.

SEC. 18. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to make the necessary statutory changes to implement the Budget Act of 2002 at the earliest possible time, it is necessary that this act take effect immediately.

CHAPTER 1033

An act to amend Section 37022 of the Public Resources Code, and to amend Section 40016 of the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

[Approved by Governor September 28, 2002. Filed with Secretary of State September 28, 2002.]

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

SECTION 1. Section 37022 of the Public Resources Code is amended to read:

37022. (a) No more than a total of one hundred million dollars ($100,000,000) in tax credits may be awarded pursuant to this division.

(b) Tax credits may be awarded pursuant to this division in the fiscal years 2000–01, 2001–02, 2002–03, 2003–04, and 2004–05. No tax credits may be awarded subsequent to fiscal year 2004–05 without further statutory authorization.

(c) In addition to the limitations in subdivisions (a) and (b), no tax credits may be awarded pursuant to this division between July 1, 2002, and June 30, 2003, inclusive. Any amounts that would have been awarded pursuant to this division in the 2002–03 fiscal year, but for the application of the preceding sentence, may be awarded in the 2003–04 fiscal year and the remainder, if any, in the 2004–05 fiscal year.

SEC. 2. Section 40016 of the Revenue and Taxation Code is amended to read:

40016. (a) A surcharge is imposed on the consumption in this state of electrical energy purchased from an electric utility on and after January 1, 2003, at the rate of three-tenths mill ($0.0003) per kilowatthour, or at the rate determined pursuant to subdivision (b).

(b) The Energy Commission shall fix the rate at a public meeting in each November for each calendar year starting the following January. Under no circumstances may the rate fixed exceed three-tenths mill ($0.0003) per kilowatthour. If the commission fails to fix the rate in any November, the surcharge shall continue at the rate in effect during that November.

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

CHAPTER 1034

An act to amend Sections 44520 and 44526 of the Health and Safety Code, relating to pollution.

[Approved by Governor September 28, 2002. Filed with Secretary of State September 28, 2002.]

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

SECTION 1. Section 44520 of the Health and Safety Code is amended to read:

44520. (a) The authority shall, in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, adopt all necessary rules and regulations to carry out its powers and duties under this division. The authority may call upon any board or department of the state government for aid and assistance in the preparation of plans and specifications and in the development of technology necessary to effectively control pollution.

(b) Notwithstanding subdivision (a), the authority, or any other agency implementing a small business or brownfield site financing assistance program pursuant to an interagency agreement with the authority, may adopt regulations relating to small business or brownfield site financing 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 purposes of that Chapter 3.5, including Section 11349.6 of the Government Code, the adoption of the regulations shall be considered by the Office of Administrative Law to be necessary for the immediate preservation of the public peace, health and safety, and general welfare. Notwithstanding subdivision (e) of Section 11346.1 of the Government Code, the regulations shall be repealed 180 days after their effective date, unless the adopting authority or agency complies with that Chapter 3.5, as provided in subdivision (e) of Section 11346.1 of the Government Code.

(c) Notwithstanding subdivision (a), the authority, or any other agency implementing a loan program pursuant to an interagency agreement with the authority, may adopt regulations relating to the loans and grants authorized under subdivision (g) of Section 44526 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 purposes of that Chapter 3.5, including Section 11349.6 of the Government Code, the adoption of the regulations shall be considered by the Office of Administrative Law to be necessary for the immediate preservation of the public peace, health and safety, and general welfare. Notwithstanding subdivision (e) of Section 11346.1 of the Government Code, the regulations shall be repealed 180 days after their effective date, unless the adopting authority or agency complies with that Chapter 3.5, as provided in subdivision (e) of Section 11346.1 of the Government Code.

SEC. 2. Section 44526 of the Health and Safety Code is amended to read:

44526. The authority is authorized:

(a) To determine the location and character of any project to be financed under the provisions of this division, to lend financial assistance to any participating party, to construct, reconstruct, renovate, replace, lease, as lessor or lessee, and regulate the same, and to enter into

contracts for the sale of any pollution control facilities, including installment sales or sales under conditional sales contracts, and to make loans to participating parties to lend financial assistance in the acquisition, construction, or installation of a project.

(b) To issue bonds, notes, bond anticipation notes, and other obligations of the authority for any of its corporate purposes, and to fund or refund the same, all as provided in this division.

(c) To fix fees and charges for pollution control facilities, and to revise from time to time those fees and charges, and to collect rates, rents, fees, and charges for the use of and for any facilities or services furnished, or to be furnished, by a project or any part thereof and to contract with any person, partnership, association, corporation, or public agency with respect thereto, and to fix the terms and conditions upon which any pollution control facilities may be sold or disposed of, whether upon installment sales contracts or otherwise.

(d) To employ and fix the compensation of bond counsel, financial consultants, and advisers as may be necessary in its judgment in connection with the issuance and sale of any bonds, notes, bond anticipation notes, or other obligations of the authority; to contract for engineering, architectural, accounting, or other services of appropriate agencies as may be necessary in the judgment of the authority for the successful development of any project; and to pay the reasonable costs of consulting engineers, architects, accountants, and construction experts employed by any participating party if, in the judgment of the authority, those services are necessary to the successful development of any project, and those services are not obtainable from any public agency.

(e) To receive and accept loans, contributions, or grants, in money, property, labor, or other things of value, for, or in aid of, the authority in carrying out the purposes of this division, from any source including, but not limited to, the federal government, the state, or any agency of the state, any local government or agency thereof, or any nonprofit or for-profit private entity or individual.

(f) To apply for, and accept, subventions, grants, loans, advances, and contributions from any source, of money, property, labor, or other things of value. The sources may include, but are not limited to, bond proceeds, dedicated taxes, state appropriations, federal appropriations, federal grant and loan funds, public and private sector retirement system funds, and proceeds of loans from the Pooled Money Investment Account.

(g) To provide grants and loans to any city or county deemed eligible by the authority. The grants and loans shall be used to assist California neighborhoods suffering from high poverty or unemployment levels, or from low-income levels, to assist cities and counties in developing and implementing growth policies and programs that reduce pollution

hazards and the degradation of the environment, or to promote infill development to revitalize these communities. The grants and loans may be used to employ the technical expertise necessary to identify, assess, and complete applications for state, federal, and private economic assistance programs that develop and implement sustainable development and sound environmental policies and programs. Priority shall be given to applicants lacking the resources to identify, assess, and complete applications for economic assistance, and for those lacking the resources to develop and implement sustainable growth and other sound environmental policies and programs. The authority shall fund these grants and loans from any funds available to the authority or set aside for the authority's administrative expenses. The authority may not award more than five million dollars ($5,000,000) in grants and loans pursuant to this subdivision. This subdivision shall remain operative only until January 1, 2007, and as of that date is no longer operative, unless a later enacted statute that is enacted before January 1, 2007, deletes or extends that date.

(h) (1) To provide a loan directly, or indirectly through one or more public or private sector intermediaries, to any city, county, school district, redevelopment agency, financial institution, as defined in subdivision (d) of Section 44559.1, for-profit or not-for-profit organization, or participating party, as defined in Section 44506, to assist in financing, among other things, the costs of performing or obtaining brownfield site assessments, remedial action plans and reports, technical assistance, the cleanup, remediation, or development of brownfield sites, or any other similar or related costs, subject to all applicable federal, state, and local laws, procedures, and regulations.

(2) The authority shall establish standards and criteria to ensure that a recipient of direct or indirect financing for cleanup or remediation pursuant to this subdivision has the necessary financial resources and expertise to successfully and appropriately complete the cleanup or remediation of the property.

(3) The authority may pay all, or a portion, of the associated program development and implementation costs of any public or private sector intermediaries through which a loan is made. A loan authorized by this subdivision is subject to both of the following:

(A) A loan may be used in connection with a brownfield site prior to a determination of whether the site has a reasonable potential for economically beneficial reuse.

(B) A loan may be made upon the terms determined by the authority and may provide for any rate of interest or no interest.

(4) The authority shall fund a loan made pursuant to this subdivision from any funds available to it, from any funds set aside for the authority's

administrative expenses, or from any small business assistance fund established for these purposes pursuant to Section 44548.

(5) The authority may waive repayment of all, or a portion, of any loan made pursuant to this subdivision upon conditions to be determined by the authority, and the amount so waived shall be deemed a grant to the recipient.

(i) To do all things generally necessary or convenient to carry out the purposes of this division.

CHAPTER 1035

An act to amend Sections 52052, 52055.5, and 52055.51 of, to add Sections 52055.52 and 52055.53 to, and to repeal Section 52052.3 of, the Education Code, relating to school accountability.

[Approved by Governor September 28, 2002. Filed with Secretary of State September 28, 2002.]

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 counted as part of a school district's enrollment in the October California Basic Educational Data System's data collection for the current fiscal year and were continuously enrolled during that 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 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 52052.3 of the Education Code is repealed.

SEC. 3. 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 state-monitored school.

(1) The State Board of Education shall make its final determination regarding whether or not a school shows significant growth no later than 30 days after the public release of a school's growth in API results or the next regularly scheduled meeting of the State Board of Education following the expiration of the 30 days if meeting the 30-day time limit would not provide the State Board of Education with sufficient time to comply with the Bagley-Keene Open Meeting Act (Article 9 (commencing with Section 11120) of Chapter 1 of Division 3 of Title 2 of the Government Code).

(2) Notwithstanding any other provision of law, within 90 days after the public release of a state-monitored school's growth in API results,

the Superintendent of Public Instruction, in consultation with the State Board of Education, shall do the following:

(A) Assume all the legal rights, duties, and powers of the governing board with respect to that school, subject to the provisions of paragraphs (1) and (7) of subdivision (e) and except as provided by Section 52055.51.

(B) Reassign the principal of that school, subject to the findings in subdivision (g).

(3) In addition to the actions specified in paragraph (2), the Superintendent of Public Instruction, after consultation with the State Board of Education, shall do one or more of the following with respect to a state-monitored school:

(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 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.

(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, excluding for-profit organizations. The entity chosen to assume management of the school shall possess the qualifications specified in subdivision (b) of Section 52055.51. Consistent with paragraph (6) of subdivision (e), the involvement of the school district during the sanctions process shall be established by contract. The costs of the entity to manage the school shall be established by contract and shall be paid by the school district. 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, pursuant to Section 3543.2 of the Government Code.

(F) Reorganize the school.

(G) Close the school.

(H) Place a trustee at the school, for a period not to exceed three years, who shall monitor and review the operation of the school. The trustee shall possess the qualifications specified in subdivision (b) of Section 52055.51, shall compile an initial report in accordance with the requirements of subdivision (d) of Section 52055.51, and shall receive reports from the school district and schoolsite no less than three times during the year on the progress towards meeting the goals established in

the initial report. During the period of his or her service, the trustee may stay or rescind those actions of the governing board of the school district or schoolsite principal that, in the judgment of the trustee, may detrimentally affect the conditions of the state-monitored school to which the trustee is assigned. The salary and benefits of the trustee shall be established by the Superintendent of Public Instruction, in consultation with the State Board of Education, and shall be paid by the school district.

(c) When a school is deemed to be a state-monitored school, the governing board of the school district shall, at a regularly scheduled public meeting, inform the parents and guardians of pupils enrolled at the schoolsite that the school is a state-monitored school and that as a result of this determination the corrective actions set forth in subdivision (b) may occur.

(d) In addition to the actions taken pursuant to subdivision (b), the governing board of the school district and the district superintendent shall be included in discussions regarding the governance of the state-monitored schoolsite and the actions that shall be taken in order for the schoolsite to succeed. During the discussions, the participants shall clearly delineate the role that the governing board of the school district and the district superintendent will play during the sanctions period and shall report this delineation to the Superintendent of Public Instruction. The role to be played by the governing board of the school district and the district superintendent as delineated during the discussions regarding the governance of the state-monitored schoolsite shall be in addition to those actions set forth in subdivision (e).

(e) After a school is deemed to be a state-monitored school pursuant to subdivision (b), the governing board of the school district shall do all of the following:

(A) Make the same fiscal, human, and educational resources, at a minimum, available to the schoolsite as were available before the action taken pursuant to subdivision (b) excluding state or federal funding provided pursuant to Sections 52054.5 and 52055.600. If the total amount of resources available to the school district differs from one year to another, it shall make the same proportion of resources available to the schoolsite as was available before the action taken pursuant to subdivision (b).

(B) The entity selected to manage a school pursuant to subparagraph (C) of paragraph (3) of subdivision (b) shall review the resources allocated to the schoolsite and determine if additional resources should be made available from district funds to reasonably support the schoolsite without detriment to the other schools and pupils of the district.

(C) If the school does not have a management team pursuant to subparagraph (C) of paragraph (3) of subdivision (b), the Superintendent of Public Instruction, in consultation with the State Board of Education, shall designate an entity to review the resources allocated to the schoolsite and determine if additional resources should be made available from district funds to reasonably support the schoolsite without detriment to the other schools and pupils of the district.

(D) If the entity selected to manage a school pursuant to subparagraph (C) of paragraph (3) of subdivision (b) or the entity chosen by the Superintendent of Public Instruction pursuant to subparagraph (C) of paragraph (1) is unable to obtain the information necessary to make this determination, the entity may request that the Superintendent of Public Instruction and State Board of Education intervene to obtain the necessary documents.

(E) Any dispute between the entity selected to manage a school pursuant to subparagraph (C) of paragraph (3) of subdivision (b) or the entity chosen by the Superintendent of Public Instruction pursuant to subparagraph (C) of paragraph (1) and the school district over resource allocations shall be resolved by the Superintendent of Public Instruction, in consultation with the State Board of Education.

(2) Continue its current ownership status with respect to the schoolsite.

(3) Continue to provide the same insurance coverage as before the action taken pursuant to subdivision (b) with respect to property, liability, error and omissions, and other regularly provided policies.

(4) Name the Superintendent of Public Instruction and the State Department of Education as additional insureds upon transfer of legal rights, duties, and responsibilities to the Superintendent of Public Instruction.

(5) Continue to provide facilities support, including maintenance if appropriate to the management arrangement, and full schoolsite participation in bond financing.

(6) Remain involved with the school throughout the sanction period.

(7) If the State Board of Education approves, the governing board of the school district may retain its legal rights, duties, and responsibilities with respect to that school.

(f) 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).

(g) (1) 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, which may be a panel consisting of the county superintendent of schools of the county in which the school is located or an adjoining county, one principal with experience in a similar type of school, and the superintendent of the school district in which the state-monitored school is located, shall do the following:

(A) Hold an informal hearing to determine whether there are sufficient issues to proceed to a formal hearing. The informal hearing shall be held in a closed session. The principal, and his or her representative, and a school district representative may be present at the informal hearing. The decision on whether to proceed to a formal hearing shall be posted and presented at a regularly scheduled public meeting of the governing board of the school district. If the decision is not to proceed to a formal hearing, the posting and presentation shall explain the rationale for this decision. This item may not be a consent item on the agenda.

(B) Hold a formal hearing on the matter in the school district and make both of the following findings:

(i) A finding that the principal had the authority to take specific enumerated actions that would have helped the school meet its performance goals.

(ii) A finding that the principal failed to take specific enumerated actions pursuant to paragraph (1).

(2) Evidence to support the findings made at a formal hearing held pursuant to subparagraph (B) of paragraph (1) shall be presented and discussed in a closed session. The principal, or his or her representative, and a school district representative may be present in the closed session. The findings shall be posted and presented at a regularly scheduled public meeting of the governing board of the school district. This item may not be a consent item on the agenda. The governing board shall give adequate time for public input and response to findings.

(3) The Superintendent of Public Instruction may not take any action against a principal pursuant to subdivision (b) if the principal is assigned to the school for one academic year or less.

(h) 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 state-monitored school and subject to the provisions of paragraphs (1) to (10), inclusive, of subdivision (b).

(i) An action taken pursuant to subdivision (b), (c), (d), (e), or (f) shall be conducted from funds provided for that purpose in the annual Budget Act and shall not require reimbursement by the Commission on State Mandates.

(j) An action taken pursuant to subdivision (b), (e), or (f) 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. These findings shall be made public and discussed at a regularly scheduled meeting of the governing board of the school district before the enactment of any action taken pursuant to subdivision (b), (c), or (d).

SEC. 4. Section 52055.51 of the Education Code is amended to read:

52055.51. (a) Instead of the actions specified in subdivision (b) of Section 52055.5, 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. If the State Board of Education approves, the governing board of the school district may retain its legal rights, duties, and responsibilities with respect to that school.

(b) School assistance and intervention 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 state-monitored 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 assignment of a school assistance and intervention team, 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 section shall not increase local costs or require reimbursement by the Commission on State Mandates.

SEC. 5. Section 52055.52 is added to the Education Code, to read:

52055.52. (a) Thirty-six months after the Superintendent of Public Instruction assigns a management team, trustee, or a school assistance and intervention team to a schoolsite, if the school makes significant growth on the Academic Performance Index, as determined by the State Board of Education, in two consecutive years, the school shall exit the Immediate Intervention/Underperforming Schools Program and is no longer subject to the requirements of the program.

(b) Thirty-six months after the Superintendent of Public Instruction assigns a management team, trustee, or a school assistance and intervention team to a schoolsite, if the management team, trustee, or school assistance and intervention team fails to assist the school in making significant growth on the Academic Performance Index, as determined by the State Board of Education, the Superintendent of Public Instruction shall remove the management team, trustee, or school assistance and intervention team from providing services at the schoolsite and any other schoolsite. Additionally, the Superintendent of Public Instruction shall do at least one of the following:

(1) Require the school district to ensure, using available federal funds, that 100 percent of the teachers at the schoolsite are highly qualified, as defined by the state for the purposes of the federal No Child Left Behind Act.

(2) Require the school to contract, using available federal funds, with an outside entity to provide supplemental instruction to low-performing pupils and assign a management team, trustee, or school assistance and intervention team that has demonstrated success with other state-monitored schools.

(3) Allow parents of pupils enrolled at the school to apply directly to the State Board of Education to establish the charter school at the existing schoolsite.

(4) Close the school.

SEC. 6. Section 52055.53 is added to the Education Code to read:

52055.53. In order to ensure that management teams and trustees are implementing a sound educational program in state-monitored schools, the Superintendent of Public Instruction shall annually withhold 20 percent of its contractual obligation to a management team or trustee until the Superintendent of Public Instruction is satisfied that the management team or trustee has met the contractual obligation to improve pupil learning.

CHAPTER 1036

An act to add Article 22.6 (commencing with Section 8484.7) to Chapter 2 of Part 6 of the Education Code, relating to 21st Century Community Learning Centers.

[Approved by Governor September 28, 2002. Filed with Secretary of State September 28, 2002.]

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

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

(a) After school programs are a proven and cost-effective way to improve standardized test scores, prevent juvenile violence and crime, and reduce youth drug, tobacco, and alcohol use.

(b) After school programs provide constructive alternatives to risk-taking behaviors for youth on schooldays. Studies show that the after school hours between 3:00 p.m. and 6:00 p.m. are the peak hours for youths to become involved in juvenile crime, become victims of violent crime, to engage in teen sex, and to use drugs, tobacco, and alcohol.

(c) After school programs contribute to young people's successful transition to adulthood by providing challenging opportunities to build relevant life and work skills, develop relationships with caring adults

and mentors, increase civic engagement, and give back to the community.

(d) The state's comprehensive after school program, the Before and After School Learning and Safe Neighborhoods Partnerships Program, does not include high school pupils.

(e) The state should increase after school programs for high school pupils, targeting those pupils most in need of resources that promote school success and the avoidance of high-risk behaviors.

(f) The state should require a rigorous evaluation to measure academic and behavioral outcomes attributable to after school programs for high school pupils.

(g) These evaluations should inform future policymakers regarding implementation of high school after school programs.

SEC. 2. Article 22.6 (commencing with Section 8484.7) is added to Chapter 2 of Part 6 of the Education Code, to read:

Article 22.6. 21st Century Community Learning Centers

8484.7. It is the intent of the Legislature that the 21st Century Community Learning Centers program contained within the federal No Child Left Behind Act of 2001 (P.L. 107-110) complement the existing Before and After School Learning and Safe Neighborhoods Partnerships Program established by Article 22.5 (commencing with Section 8482), utilizing the existing per pupil rates and maximum grant amounts specified in that article, and to provide the local flexibility needed to implement federal 21st Century Community Learning Centers programs through direct grants as specified in this article.

8484.8. In accordance with Part B of Title IV of the federal No Child Left Behind Act of 2001 (P.L. 107-110), of the funds appropriated in Item 6110-197-0890 of Section 2.00 of the Budget Act of 2002, funds shall be available for expenditure as follows:

(a) The amount of one million dollars ($1,000,000) shall be available to the State Department of Education for purposes of providing technical assistance, evaluation and training services, for carrying out programs related to 21st Century Community Learning Center programs.

(b) (1) An amount of up to three million five hundred thousand dollars ($3,500,000) shall be available for direct grants, in an amount not to exceed twenty-five thousand dollars ($25,000) per site, per year, for community learning center programs that serve middle and elementary school pupils for providing equitable access to, and participation in, community learning center programs, according to needs determined by the local community.

(2) The State Department of Education shall determine the requirements for eligibility for a grant under this subdivision, consistent with the following:

(A) Consistent with the local partnership approach inherent in Article 22.5 (commencing with Section 8482), grants awarded under this subdivision shall provide supplemental assistance to programs. It is not intended that a grant fund the full anticipated costs of the services provided by a community learning center program.

(B) In determining the need for a grant pursuant to this subdivision, the State Department of Education shall base its determination on a needs assessment and a determination that existing resources are not available to meet these needs, including, but not limited to, a description of how the needs, strengths, and resources of the community have been assessed, currently available resources, and the justification for additional resources for that purpose.

(C) The State Department of Education shall award grants for a specific purpose, as justified by the applicant.

(3) To be eligible to receive a grant under this subdivision, the designated public agency representative for the applicant shall be required to certify that an annual fiscal audit will be conducted and that adequate, accurate records will be kept. In addition, each applicant shall provide the State Department of Education with the assurance that funds received under this subdivision are expended only for those services and supports for which they are granted. The State Department of Education shall require grant recipients to submit annual budget reports, and the State Department of Education shall have the authority to withhold funds in subsequent years if direct grant funds are expended for purposes other than as awarded.

(c) Up to one million dollars ($1,000,000) shall be available for direct grants of up to twenty thousand dollars ($20,000) per site, per year, for providing family literacy services only to those schoolsites that identify such a need for families of 21st Century Community Learning Center program pupils, and that demonstrate a fiscal hardship by certifying that existing resources including, but not limited to, funding for Title III of the No Child Left Behind Act of 2001 (P.L. 107-110), Chapter 3 (commencing with Section 300) of Part 1, adult education, community college, and the federal Even Start Program are not available or are insufficient to serve these families. An assurance that the funds received under this subdivision are expended only for those services and supports for which they were granted shall be required.

(d) Of the remaining funds in Item 6110-197-0890 of Section 2.00 of the Budget Act of 2002, two million five hundred thousand dollars ($2,500,000) shall be allocated on a priority basis for grants to community learning center programs serving high school pupils, and the

remainder of this amount shall be allocated on a priority basis for programs for middle and elementary school pupils.

(e) Grant awards under this section shall be restricted to those applications that propose primarily to serve pupils that attend schoolwide programs, as described in Title I of the No Child Left Behind Act of 2001. Competitive priority shall be given to applications that propose to serve children and youth in schools designated as being in need of improvement under subsection (b) of Section 6316 of Title 20 of the United States Code, and that are jointly submitted by school districts and community-based organizations. Applications to serve pupils in programs that have received grants under Article 22.5 (commencing with Section 8482) shall be funded only when proposing to expand in additional sites or to add pupils to a currently funded site.

(f) Core funding grants for programs serving middle and elementary school pupils in before and after school programs shall conform to the per pupil rates and grant maximum amounts established in Article 22.5 (commencing with Section 8482) for similar state funded programs. Funding for each grant shall be allocated in annual increments for a period not to exceed five years. A first year grant award of core funding shall be fully allocated if a program has achieved no less than 70 percent of the proposed pupil attendance. Second year core funding shall be fully allocated if a program has achieved no less than 85 percent of the proposed pupil attendance. Subsequent year core funding shall be allocated if a program has achieved no less than 100 percent pupil attendance. Each grantee shall be required to identify the federal, state, and local programs that will be combined or coordinated with the proposed program for the most effective use of public resources, and to describe a plan for continuing the program beyond federal grant funding. Grantees shall be required to submit annual attendance data and results to facilitate evaluation and compliance with provisions established by the State Department of Education. Programs receiving grants under this subdivision are not assured of grant renewal from future state or federal funding at the conclusion of the grant period.

(g) A total annual grant award for core funding and direct grants for a site serving elementary or middle school pupils shall be fifty thousand dollars ($50,000) per year or more, consistent with federal requirements.

(h) Grants for programs serving high school pupils at schoolsites or sites of other organizations, as determined to be eligible by the State Department of Education and consistent with the provisions of the 21st Century Community Learning Centers program, shall be available as an annual minimum grant of fifty thousand dollars ($50,000) per year. Grant funding above the minimum shall be determined in proportion to the average daily attendance of the high school program site or sites to be served and other factors including, but not limited to, proposed

attendance and effective use of resources as determined by the State Department of Education up to two hundred and fifty thousand dollars ($250,000) per year for five years. A grantee that establishes a high school program pursuant to this subdivision shall be subject to annual reporting and recertification as required by the State Department of Education. After the second year, the State Department of Education shall reduce funding of programs in which actual attendance is significantly below proposed attendance levels. An evaluation of the program funded pursuant to this subdivision shall be submitted no later than 180 days after the completion of the second year of the program. The State Department of Education shall provide the results of that evaluation and work with the Legislature, the Department of Finance, program providers, and other interested parties to adopt or restructure a high school after school program for California that is both programmatically and fiscally sound. Grantees shall be eligible for fourth and fifth year funding consistent with the restructured requirements. Each grantee shall be required to identify the federal, state, and local programs that will be combined or coordinated with the proposed program for the most effective use of public resources and to describe a plan for continuing the program beyond federal grant funding. Grantees shall be required to submit annual attendance data results to facilitate evaluation and compliance with provisions established by the State Department of Education. Programs receiving grants under this subdivision are not assured of grant renewal from future state or federal funding at the conclusion of the grant period.

(i) Funds received but unexpended under this article may be carried forward to subsequent years consistent with federal requirements. In year one, the full grant may be retained.

(j) The provisions of this article shall be operative only to the extent that federal funds are made available for the purposes of this article. It is the intent of the Legislature that the provisions of this article not be considered a precedent for general fund augmentation of either the state administered, federally funded program of this article, or any other state funded before or after school program.

CHAPTER 1037

An act to amend Section 51101 of, and to add Sections 51101.1 and 51101.2 to, the Education Code, relating to English learners.

[Approved by Governor September 28, 2002. Filed with Secretary of State September 28, 2002.]

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

SECTION 1. This act shall be known as the Parents Rights Act of 2002.

SEC. 2. 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, including disciplinary rules and procedures pursuant to Section 35291, attendance, retention, and promotion policies pursuant to Section 48070.5, 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.

(16) To be notified, as early in the school year as practicable pursuant to Section 48070.5, if their child is identified as being at risk of retention and of their right to consult with school personnel responsible for a decision to promote or retain their child and to appeal a decision to retain or promote their child.

(b) In addition to the rights described in subdivision (a), parents and guardians of pupils, including those parents and guardians whose primary language is not English, 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. 3. Section 51101.1 is added to the Education Code, to read:

51101.1. (a) A parent or guardian's lack of English fluency does not preclude a parent or guardian from exercising the rights guaranteed under this chapter. A school district shall take all reasonable steps to ensure that all parents and guardians of pupils who speak a language other than English are properly notified in English and in their home language, pursuant to Section 48985, of the rights and opportunities available to them pursuant to this section.

(b) Parents and guardians of English learners are entitled to participate in the education of their children pursuant to Section 51101 and as follows:

(1) To receive, pursuant to paragraph (5) of subdivision (a) of Section 51101, the results of their child's performance on standardized tests, including the English language development test.

(2) To be given any required written notification in English and the pupil's home language pursuant to Section 48985 and any other applicable law.

(3) To participate in school and district advisory bodies in accordance with federal and state laws and regulations.

(4) To support their children's advancement toward literacy. School personnel shall encourage parents and guardians of English learners to

support their child's progress toward literacy both in English and, to the extent possible, in the child's home language. School districts are encouraged to make available, to the extent possible, surplus or undistributed instructional materials to parents and guardians, pursuant to subdivision (d) of Section 60510, in order to facilitate parental involvement in their children's education.

(5) To be informed, pursuant to Sections 33126 and 48985, about statewide and local academic standards, testing programs, accountability measures, and school improvement efforts.

(c) A school with a substantial number of English learners is encouraged to establish parent centers with personnel who can communicate with the parents and guardians of these children to encourage understanding of and participation in the educational programs in which their children are enrolled.

CHAPTER 1038

An act to amend Sections 65583, 65863.10, and 65863.11 of the Government Code, and to repeal Section 52097.1 of the Health and Safety Code, and to amend Sections 41 and 44 of Chapter 434 of the Statutes of 2001, relating to housing.

[Approved by Governor September 28, 2002. Filed with Secretary of State September 28, 2002.]

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

SECTION 1. Section 65583 of the Government Code is amended to read:

65583. The housing element shall consist of an identification and analysis of existing and projected housing needs and a statement of goals, policies, quantified objectives, financial resources, and scheduled programs for the preservation, improvement, and development of housing. The housing element shall identify adequate sites for housing, including rental housing, factory-built housing, and mobilehomes, and shall make adequate provision for the existing and projected needs of all economic segments of the community. The element shall contain all of the following:

(a) An assessment of housing needs and an inventory of resources and constraints relevant to the meeting of these needs. The assessment and inventory shall include the following:

(1) An analysis of population and employment trends and documentation of projections and a quantification of the locality's

existing and projected housing needs for all income levels. These existing and projected needs shall include the locality's share of the regional housing need in accordance with Section 65584.

(2) An analysis and documentation of household characteristics, including level of payment compared to ability to pay, housing characteristics, including overcrowding, and housing stock condition.

(3) An inventory of land suitable for residential development, including vacant sites and sites having potential for redevelopment, and an analysis of the relationship of zoning and public facilities and services to these sites.

(4) An analysis of potential and actual governmental constraints upon the maintenance, improvement, or development of housing for all income levels and for persons with disabilities as identified in the analysis pursuant to paragraph (6), including land use controls, building codes and their enforcement, site improvements, fees and other exactions required of developers, and local processing and permit procedures. The analysis shall also demonstrate local efforts to remove governmental constraints that hinder the locality from meeting its share of the regional housing need in accordance with Section 65584 and from meeting the need for housing for persons with disabilities identified pursuant to paragraph (6).

(5) An analysis of potential and actual nongovernmental constraints upon the maintenance, improvement, or development of housing for all income levels, including the availability of financing, the price of land, and the cost of construction.

(6) An analysis of any special housing needs, such as those of the elderly, persons with disabilities, large families, farmworkers, families with female heads of households, and families and persons in need of emergency shelter.

(7) An analysis of opportunities for energy conservation with respect to residential development.

(8) An analysis of existing assisted housing developments that are eligible to change from low-income housing uses during the next 10 years due to termination of subsidy contracts, mortgage prepayment, or expiration of restrictions on use. ''Assisted housing developments,'' for the purpose of this section, shall mean multifamily rental housing that receives governmental assistance under federal programs listed in subdivision (a) of Section 65863.10, state and local multifamily revenue bond programs, local redevelopment programs, the federal Community Development Block Grant Program, or local in-lieu fees. ''Assisted housing developments'' shall also include multifamily rental units that were developed pursuant to a local inclusionary housing program or used to qualify for a density bonus pursuant to Section 65916.

(A) The analysis shall include a listing of each development by project name and address, the type of governmental assistance received, the earliest possible date of change from low-income use and the total number of elderly and nonelderly units that could be lost from the locality's low-income housing stock in each year during the 10-year period. For purposes of state and federally funded projects, the analysis required by this subparagraph need only contain information available on a statewide basis.

(B) The analysis shall estimate the total cost of producing new rental housing that is comparable in size and rent levels, to replace the units that could change from low-income use, and an estimated cost of preserving the assisted housing developments. This cost analysis for replacement housing may be done aggregately for each five-year period and does not have to contain a project-by-project cost estimate.

(C) The analysis shall identify public and private nonprofit corporations known to the local government which have legal and managerial capacity to acquire and manage these housing developments.

(D) The analysis shall identify and consider the use of all federal, state, and local financing and subsidy programs which can be used to preserve, for lower income households, the assisted housing developments, identified in this paragraph, including, but not limited to, federal Community Development Block Grant Program funds, tax increment funds received by a redevelopment agency of the community, and administrative fees received by a housing authority operating within the community. In considering the use of these financing and subsidy programs, the analysis shall identify the amounts of funds under each available program which have not been legally obligated for other purposes and which could be available for use in preserving assisted housing developments.

(b) (1) A statement of the community's goals, quantified objectives, and policies relative to the maintenance, preservation, improvement, and development of housing.

(2) It is recognized that the total housing needs identified pursuant to subdivision (a) may exceed available resources and the community's ability to satisfy this need within the content of the general plan requirements outlined in Article 5 (commencing with Section 65300). Under these circumstances, the quantified objectives need not be identical to the total housing needs. The quantified objectives shall establish the maximum number of housing units by income category that can be constructed, rehabilitated, and conserved over a five-year time period.

(c) A program which sets forth a five-year schedule of actions the local government is undertaking or intends to undertake to implement the policies and achieve the goals and objectives of the housing element

through the administration of land use and development controls, provision of regulatory concessions and incentives, and the utilization of appropriate federal and state financing and subsidy programs when available and the utilization of moneys in a low- and moderate- income housing fund of an agency if the locality has established a redevelopment project area pursuant to the Community Redevelopment Law (Division 24 (commencing with Section 33000) of the Health and Safety Code). In order to make adequate provision for the housing needs of all economic segments of the community, the program shall do all of the following:

(1) (A) Identify adequate sites which will be made available through appropriate zoning and development standards and with services and facilities, including sewage collection and treatment, domestic water supply, and septic tanks and wells, needed to facilitate and encourage the development of a variety of types of housing for all income levels, including multifamily rental housing, factory-built housing, mobilehomes, housing for agricultural employees, emergency shelters, and transitional housing in order to meet the community's housing goals as identified in subdivision (b).

(i) Where the inventory of sites, pursuant to paragraph (3) of subdivision (a), does not identify adequate sites to accommodate the need for groups of all household income levels pursuant to Section 65584, the program shall provide for sufficient sites with zoning that permits owner-occupied and rental multifamily residential use by right, including density and development standards that could accommodate and facilitate the feasibility of housing for very low and low-income households.

(ii) Where the inventory of sites pursuant to paragraph (3) of subdivision (a) does not identify adequate sites to accommodate the need for farmworker housing, the program shall provide for sufficient sites to meet the need with zoning that permits farmworker housing use by right, including density and development standards that could accommodate and facilitate the feasibility of the development of farmworker housing for low- and very low income households.

(B) For purposes of this paragraph, the phrase ''use by right'' shall mean the use does not require a conditional use permit, except when the proposed project is a mixed-use project involving both commercial or industrial uses and residential uses. Use by right for all rental multifamily residential housing shall be provided in accordance with subdivision (f) of Section 65589.5.

(C) The requirements of this subdivision regarding identification of sites for farmworker housing shall apply commencing with the next revision of housing elements required by Section 65588 following the enactment of this subparagraph.

(2) Assist in the development of adequate housing to meet the needs of low- and moderate-income households.

(3) Address and, where appropriate and legally possible, remove governmental constraints to the maintenance, improvement, and development of housing, including housing for all income levels and housing for persons with disabilities. The program shall remove constraints to, or provide reasonable accommodations for housing designed for, intended for occupancy by, or with supportive services for, persons with disabilities.

(4) Conserve and improve the condition of the existing affordable housing stock, which may include addressing ways to mitigate the loss of dwelling units demolished by public or private action.

(5) Promote housing opportunities for all persons regardless of race, religion, sex, marital status, ancestry, national origin, color, familial status, or disability.

(6) (A) Preserve for lower income households the assisted housing developments identified pursuant to paragraph (8) of subdivision (a). The program for preservation of the assisted housing developments shall utilize, to the extent necessary, all available federal, state, and local financing and subsidy programs identified in paragraph (8) of subdivision (a), except where a community has other urgent needs for which alternative funding sources are not available. The program may include strategies that involve local regulation and technical assistance.

(B) The program shall include an identification of the agencies and officials responsible for the implementation of the various actions and the means by which consistency will be achieved with other general plan elements and community goals. The local government shall make a diligent effort to achieve public participation of all economic segments of the community in the development of the housing element, and the program shall describe this effort.

(d) The analysis and program for preserving assisted housing developments required by the amendments to this section enacted by the Statutes of 1989 shall be adopted as an amendment to the housing element by July 1, 1992.

(e) Failure of the department to review and report its findings pursuant to Section 65585 to the local government between July 1, 1992, and the next periodic review and revision required by Section 65588, concerning the housing element amendment required by the amendments to this section by the Statutes of 1989, shall not be used as a basis for allocation or denial of any housing assistance administered pursuant to Part 2 (commencing with Section 50400) of Division 31 of the Health and Safety Code.

SEC. 2. Section 65863.10 of the Government Code is amended to read:

65863.10. (a) As used in this section, the following terms have the following meaning:

(1) ''Affected public entities'' means the mayor of the city in which the assisted housing development is located, or, if located in an unincorporated area, the chair of the board of supervisors of the county; the appropriate local public housing authority, if any; and the Department of Housing and Community Development.

(2) ''Affected tenant'' means a tenant household residing in an assisted housing development, as defined in paragraph (3), at the time notice is required to be provided pursuant to this section, that benefits from the government assistance.

(3) ''Assisted housing development'' means a multifamily rental housing development that receives governmental assistance under any of the following federal programs:

(A) New construction, substantial rehabilitation, moderate rehabilitation, property disposition, and loan management set-aside programs, or any other program providing project-based assistance, under Section 8 of the United States Housing Act of 1937, as amended (42 U.S.C. Sec. 1437f).

(B) The following federal programs:

(i) The Below-Market-Interest-Rate Program under Section 221(d)(3) of the National Housing Act (12 U.S.C. Sec. 1715*l*(d)(3) and (5)).

(ii) Section 236 of the National Housing Act (12 U.S.C. Sec. 1715z-1).

(iii) Section 202 of the Housing Act of 1959 (12 U.S.C. Sec. 1701q).

(C) Programs for rent supplement assistance under Section 101 of the Housing and Urban Development Act of 1965, as amended (12 U.S.C. Sec. 1701s).

(D) Programs under Section 515 of the Housing Act of 1949, as amended (42 U.S.C. Sec. 1485).

(E) Section 42 of the Internal Revenue Code.

(4) ''City'' means a general law city, a charter city, or a city and county.

(5) ''Expiration of rental restrictions'' means the expiration of rental restrictions for an assisted housing development described in subparagraph (E) of paragraph (3) unless the development has other recorded agreements restricting the rent to the same or lesser levels for at least 50 percent of the units.

(6) ''Prepayment'' means the payment in full or refinancing of the federally insured or federally held mortgage indebtedness prior to its original maturity date, or the voluntary cancellation of mortgage insurance, on an assisted housing development described in subparagraph (B) of paragraph (3) that would have the effect of

removing the current low-income affordability restrictions contained in the applicable laws and the regulatory agreement.

(7) ''Termination'' means an owner's decision not to extend or renew its participation in a federal subsidy program for an assisted housing development described in subparagraph (A) of paragraph (3), either at or prior to the scheduled date of the expiration of the contract, that may result in an increase in tenant rents or a change in the form of the subsidy from project-based to tenant-based.

(b) (1) At least 12 months prior to the anticipated date of the termination of a subsidy contract, expiration of rental restrictions, or prepayment on an assisted housing development, the owner proposing the termination or prepayment of governmental assistance or the owner of an assisted housing development in which there will be the expiration of rental restrictions shall provide a notice of the proposed change to each affected tenant household residing in the assisted housing development at the time the notice is provided and to the affected public entities. An owner who meets the requirements of Section 65863.13 shall be exempt from providing that notice. The notice shall contain all of the following:

(A) In the event of termination, a statement that the owner intends to terminate the subsidy contract or rental restrictions upon its expiration date, or the expiration date of any contract extension thereto.

(B) In the event of the expiration of rental restrictions, a statement that the restrictions will expire and whether the owner intends to increase rents greater than permitted under Section 42 of the Internal Revenue Code.

(C) In the event of prepayment, a statement that the owner intends to pay in full or refinance the federally insured or federally held mortgage indebtedness prior to its original maturity date, or voluntarily cancel the mortgage insurance.

(D) The anticipated date of the termination, prepayment of the federal program or expiration of rental restrictions, and the identity of the federal program described in subdivision (a).

(E) A statement that the proposed change would have the effect of removing the current low-income affordability restrictions in the applicable contract or regulatory agreement.

(F) A statement of the possibility that the housing may remain in the federal program after the proposed date of termination of the subsidy contract or prepayment if the owner elects to do so under the terms of the federal government's offer.

(G) A statement that other governmental assistance may be provided to tenants residing in the development at the time of the termination of the subsidy contract or prepayment.

(H) A statement that a subsequent notice of the proposed change, including anticipated changes in rents, if any, for the development, will be provided at least six months prior to the anticipated date of termination of the subsidy contract, or expiration of rental restrictions, or prepayment.

(I) A statement of notice of opportunity to submit an offer to purchase, as required in Section 65863.11.

(2) Notwithstanding paragraph (1), if an owner provides a copy of a federally required notice of termination of a subsidy contract or prepayment at least 12 months prior to the proposed change to each affected tenant household residing in the assisted housing development at the time the notice is provided and to the affected public entities, the owner shall be deemed in compliance with this subdivision, if the notice is in compliance with all federal laws. However, the federally required notice does not satisfy the requirements of Section 65863.11.

(c) (1) At least six months prior to the anticipated date of termination of a subsidy contract, expiration of rental restrictions or prepayment on an assisted housing development, the owner proposing the termination or prepayment of governmental assistance or the owner of an assisted housing development in which there will be the expiration of rental restrictions under Section 42 of the Internal Revenue Code shall provide a notice of the proposed change to each affected tenant household residing in the assisted housing development at the time the notice is provided and to the affected public entities. An owner who meets the requirements of Section 65863.13 shall be exempt from providing that notice.

(2) The notice to the tenants shall contain all of the following:

(A) The anticipated date of the termination or prepayment of the federal program, or expiration of rental restrictions, and the identity of the federal program, as described in subdivision (a).

(B) The current rent and anticipated new rent for the unit on the date of the prepayment or termination of the federal program, or expiration of rental restrictions.

(C) A statement that a copy of the notice will be sent to the city or county, or city and county, where the assisted housing development is located, to the appropriate local public housing authority, if any, and to the Department of Housing and Community Development.

(D) A statement of the possibility that the housing may remain in the federal program after the proposed date of subsidy termination or prepayment if the owner elects to do so under the terms of the federal government's offer or that a rent increase may not take place due to the expiration of rental restrictions.

(E) A statement of the owner's intention to participate in any current replacement federal subsidy program made available to the affected tenants.

(F) The name and telephone number of the city, county, or city and county, the appropriate local public housing authority, if any, the Department of Housing and Community Development, and a legal services organization, that can be contacted to request additional written information about an owner's responsibilities and the rights and options of an affected tenant.

(3) In addition to the information provided in the notice to the affected tenant, the notice to the affected public entities shall contain information regarding the number of affected tenants in the project, the number of units that are government assisted and the type of assistance, the number of the units that are not government assisted, the number of bedrooms in each unit that is government assisted, and the ages and income of the affected tenants. The notice shall briefly describe the owner's plans for the project, including any timetables or deadlines for actions to be taken and specific governmental approvals that are required to be obtained, the reason the owner seeks to terminate the subsidy contract or prepay the mortgage, and any contacts the owner has made or is making with other governmental agencies or other interested parties in connection with the notice. The owner shall also attach a copy of any federally required notice of the termination of the subsidy contract or prepayment that was provided at least six months prior to the proposed change. The information contained in the notice shall be based on data that is reasonably available from existing written tenant and project records.

(d) The owner proposing the termination or prepayment of governmental assistance or the owner of an assisted housing development in which there will be the expiration of rental restrictions under Section 42 of the Internal Revenue Code shall provide additional notice of any significant changes to the notice required by subdivision (c) within seven business days to each affected tenant household residing in the assisted housing development at the time the notice is provided and to the affected public entities. ''Significant changes'' shall include, but not be limited to, any changes to the date of termination or prepayment, or expiration of rental restrictions or the anticipated new rent.

(e) This section shall not require the owner to obtain or acquire additional information that is not contained in the existing tenant and project records, or to update any information in his or her records. The owner shall not be held liable for any inaccuracies contained in these records or from other sources, nor shall the owner be liable to any party for providing this information.

(f) For purposes of this section, service of the notice to the affected tenants, the city or county, the city and county, the appropriate local public housing authority, if any, and the Department of Housing and Community Development by the owner pursuant to subdivisions (b), (c), and (d) shall be made by first-class mail postage prepaid.

(g) Nothing in this section shall enlarge or diminish the authority, if any, that a city, county, city and county, affected tenant, or owner may have, independent of this section.

(h) If, prior to January 1, 2001, the owner has already accepted a bona fide offer from a qualified entity, as defined in subdivision (c) of Section 65863.11, and has complied with this section as it existed prior to January 1, 2001, at the time the owner decides to sell or otherwise dispose of the development, the owner shall be deemed in compliance with this section.

(i) Injunctive relief shall be available to any party identified in paragraph (1) or (2) of subdivision (a) who is aggrieved by a violation of this section.

(j) The Director of Housing and Community Development shall approve forms to be used by owners to comply with subdivisions (b) and (c). Once the director has approved the forms, an owner shall use the approved forms to comply with subdivisions (b) and (c).

(k) This section shall remain in effect only until January 1, 2011, and as of that date is repealed, unless a later enacted statute, which is enacted on or before January 1, 2011, deletes or extends that date.

SEC. 3. Section 65863.11 of the Government Code is amended to read:

65863.11. (a) Terms used in this section shall be defined as follows:

(1) ''Assisted housing development'' and ''development'' mean a multifamily rental housing development as defined in paragraph (3) of subdivision (a) of Section 65863.10.

(2) ''Owner'' means an individual, corporation, association, partnership, joint venture, or business entity that holds title to an assisted housing development.

(3) ''Tenant'' means a tenant, subtenant, lessee, sublessee, or other person legally in possession or occupying the assisted housing development.

(4) ''Tenant association'' means a group of tenants who have formed a nonprofit corporation, cooperative corporation, or other entity or organization, or a local nonprofit, regional, or national organization whose purpose includes the acquisition of an assisted housing development and that represents the interest of at least a majority of the tenants in the assisted housing development.

(5) ''Low or moderate income'' means having an income as defined in Section 50093 of the Health and Safety Code.

(6) ''Very low income'' means having an income as defined in Section 50052.5 of the Health and Safety Code.

(7) ''Local nonprofit organizations'' means not-for-profit corporations organized pursuant to Division 2 (commencing with Section 5000) of Title 1 of the Corporations Code, that have as their principal purpose the ownership, development, or management of housing or community development projects for persons and families of low or moderate income and very low income, and which have a broadly representative board, a majority of whose members are community based and have a proven track record of local community service.

(8) ''Local public agencies'' means housing authorities, redevelopment agencies, or any other agency of a city, county, or city and county, whether general law or chartered, which are authorized to own, develop, or manage housing or community development projects for persons and families of low or moderate income and very low income.

(9) ''Regional or national organizations'' means not-for-profit, charitable corporations organized on a multicounty, state, or multistate basis that have as their principal purpose the ownership, development, or management of housing or community development projects for persons and families of low or moderate income and very low income.

(10) ''Regional or national public agencies'' means multicounty, state, or multistate agencies that are authorized to own, develop, or manage housing or community development projects for persons and families of low or moderate income and very low income.

(11) ''Use restriction'' means any federal, state, or local statute, regulation, ordinance, or contract that, as a condition of receipt of any housing assistance, including a rental subsidy, mortgage subsidy, or mortgage insurance, to an assisted housing development, establishes maximum limitations on tenant income as a condition of eligibility for occupancy of the units within a development, imposes any restrictions on the maximum rents that could be charged for any of the units within a development; or requires that rents for any of the units within a development be reviewed by any governmental body or agency before the rents are implemented.

(12) ''Profit-motivated organizations and individuals'' means individuals or two or more persons organized pursuant to Division 1 (commencing with Section 100) of Title 1 of, Division 3 (commencing with Section 1200) of Title 1 of, or Division 1 (commencing with Section 15001) of Title 2 of, the Corporations Code, that carry on as a business for profit.

(13) ''Department'' means the Department of Housing and Community Development.

(14) ''Offer to purchase'' means an offer from a qualified or nonqualified entity that is nonbinding on the owner.

(15) ''Expiration of rental restrictions'' has the meaning given in paragraph (5) of subdivision (a) of Section 65863.10.

(b) An owner of an assisted housing development shall not terminate a subsidy contract or prepay the mortgage pursuant to Section 65863.10, unless the owner or its agent shall first have provided each of the entities listed in subdivision (d) an opportunity to submit an offer to purchase the development, in compliance with subdivisions (g) and (h). An owner of an assisted housing development in which there will be the expiration of rental restrictions must also provide each of the entities listed in subdivision (d) an opportunity to submit an offer to purchase the development, in compliance with subdivisions (g) and (h). An owner who meets the requirements of Section 65863.13 shall be exempt from this requirement.

(c) An owner of an assisted housing development shall not sell, or otherwise dispose of, the development in a manner that would result in either (1) a discontinuance of its use as an assisted housing development, or (2) the termination or expiration of any low-income use restrictions that apply to the development, unless the owner or its agent shall first have provided each of the entities listed in subdivision (d) an opportunity to submit an offer to purchase the development, in compliance with subdivisions (g) and (h). An owner who meets the requirements of Section 65863.13 shall be exempt from this requirement.

(d) The entities to whom an opportunity to purchase shall be provided include only the following:

(1) The tenant association of the development.

(2) Local nonprofit organizations and public agencies.

(3) Regional or national nonprofit organizations and regional or national public agencies.

(4) Profit-motivated organizations or individuals.

(e) For the purposes of this section, to qualify as a purchaser of an assisted housing development, an entity listed in subdivision (d) shall do all of the following:

(1) Be capable of managing the housing and related facilities for its remaining useful life, either by itself or through a management agent.

(2) Agree to obligate itself and any successors in interest to maintain the affordability of the assisted housing development for households of very low, low, or moderate income for either a 30-year period from the date that the purchaser took legal possession of the housing or the remaining term of the existing federal government assistance specified in subdivision (a) of Section 65863.10, whichever is greater. The development shall be continuously occupied in the approximate percentages that those households who have occupied that development on the date the owner gave notice of intent or the approximate percentages specified in existing use restrictions, whichever is higher.

This obligation shall be recorded prior to the close of escrow in the office of the county recorder of the county in which the development is located and shall contain a legal description of the property, indexed to the name of the owner as grantor. An owner that obligates itself to an enforceable regulatory agreement that will ensure for a period of not less than 30 years that rents for units occupied by low- and very low income households or that are vacant at the time of executing a purchase agreement will conform with restrictions imposed by Section 42(f) of the Internal Revenue Code shall be deemed in compliance with this paragraph. In addition, the regulatory agreement shall contain provisions requiring the renewal of rental subsidies, should they be available, provided that assistance is at a level to maintain the project's fiscal viability.

(3) Local nonprofit organizations and public agencies shall have no member among their officers or directorate with a financial interest in assisted housing developments that have terminated a subsidy contract or prepaid a mortgage on the development without continuing the low-income restrictions.

(f) If an assisted housing development is not economically feasible, as defined in paragraph (3) of subdivision (h) of Section 17058 of the Revenue and Taxation Code, a purchaser shall be entitled to remove one or more units from the rent and occupancy requirements as is necessary for the development to become economically feasible, provided that once the development is again economically feasible, the purchaser shall designate the next available units as low-income units up to the original number of those units.

(g) (1) If an owner decides to terminate a subsidy contract, or prepay the mortgage pursuant to Section 65863.10, or sell or otherwise dispose of the assisted housing development pursuant to subdivision (b) or (c), or if the owner has an assisted housing development in which there will be the expiration of rental restrictions, the owner shall first give notice of the opportunity to offer to purchase to each qualified entity on the list provided to the owner by the department, in accordance with subdivision (o), as well as to those qualified entities that directly contact the owner. The notice of the opportunity to offer to purchase must be given prior to or concurrently with the notice required pursuant to Section 65863.10 for a period of at least 12 months. The owner shall contact the department to obtain the list of qualified entities. The notice shall conform to the requirements of subdivision (h) and shall be sent to the entities by registered or certified mail, return receipt requested. The owner shall also post a copy of the notice in a conspicuous place in the common area of the development.

(2) If the owner already has a bona fide offer to purchase from an entity prior to January 1, 2001, at the time the owner decides to sell or

otherwise dispose of the development, the owner shall not be required to comply with this subdivision. However, the owner shall notify the department of this exemption and provide the department a copy of the offer.

(h) The initial notice of a bona fide opportunity to submit an offer to purchase shall contain all of the following:

(1) A statement that the owner will make available to each of the type of entities listed in subdivision (d), within 15 business days of receiving a request therefor, the terms of assumable financing, if any; the terms of the subsidy contract, if any; and proposed improvements to the property to be made by the owner in connection with the sale, if any.

(2) A statement that each of the type of entities listed in subdivision (d) has the right to purchase the development under this section.

(3) A statement that the owner will make available to each of the type of entities listed in subdivision (d), within 15 business days of receiving a request therefor, itemized lists of monthly operating expenses, capital improvements as determined by the owner made within each of the two preceding calendar years, the amount of project reserves, and copies of the two most recent financial and physical inspection reports on the development, if any, filed with the federal, state, or local agencies.

(4) A statement that the owner will make available to each of the entities listed in subdivision (d), within 15 business days of a request therefor, the most recent rent roll listing the rent paid for each unit and the subsidy, if any, paid by a governmental agency as of the date the notice of intent was made pursuant to Section 65863.10, and a statement of the vacancy rate at the development for each of the two preceding calendar years.

(5) A statement that the owner has satisfied all notice requirements pursuant to subdivision (b) of Section 65863.10, unless the notice of opportunity to submit an offer to purchase is delivered more than 12 months prior to the anticipated date of termination, prepayment, or expiration of rental restrictions.

(i) If a qualified entity elects to purchase an assisted housing development, it shall make a bona fide offer to purchase the development. A qualified entity's bona fide offer to purchase shall identify whether it is a tenant association, nonprofit organization, public agency, or profit-motivated organizations or individuals and shall certify, under penalty of perjury, that it is qualified pursuant to subdivision (e). During the first 180 days from the date of an owner's bona fide notice of the opportunity to submit an offer to purchase, an owner shall accept a bona fide offer to purchase only from a qualified entity. During this 180-day period, the owner shall not accept offers from any other entity.

(j) When a bona fide offer to purchase has been made to an owner, and the offer is accepted, a purchase agreement shall be executed.

(k) Either the owner or the qualified entity may request that the fair market value of the property, as a development, be determined by an independent appraiser qualified to perform multifamily housing appraisals, who shall be selected and paid by the requesting party. All appraisers shall possess qualifications equivalent to those required by the members of the Appraisers Institute. This appraisal shall be nonbinding on either party with respect to the sales price of the development offered in the bona fide offer to purchase, or the acceptance or rejection of the offer.

(*l*) During the 180-day period following the initial 180-day period required pursuant to subdivision (i), an owner may accept an offer from a person or an entity that does not qualify under subdivision (e). This acceptance shall be made subject to the owner providing each qualified entity that made a bona fide offer to purchase the first opportunity to purchase the development at the same terms and conditions as the pending offer to purchase, unless these terms and conditions are modified by mutual consent. The owner shall notify in writing those qualified entities of the terms and conditions of the pending offer to purchase, sent by registered or certified mail, return receipt requested. The qualified entity shall have 30 days from the date the notice is mailed to submit a bona fide offer to purchase and that offer shall be accepted by the owner. The owner shall not be required to comply with the provisions of this subdivision if the person or the entity making the offer during this time period agrees to maintain the development for persons and families of very low, low, and moderate income in accordance with paragraph (2) of subdivision (e). The owner shall notify the department regarding how the buyer is meeting the requirements of paragraph (2) of subdivision (e).

(m) This section shall not apply to any of the following: a government taking by eminent domain or negotiated purchase; a forced sale pursuant to a foreclosure; a transfer by gift, devise, or operation of law; a sale to a person who would be included within the table of descent and distribution if there were to be a death intestate of an owner; or an owner who certifies, under penalty of perjury, the existence of a financial emergency during the period covered by the first right of refusal requiring immediate access to the proceeds of the sale of the development. The certification shall be made pursuant to subdivision (p).

(n) Prior to the close of escrow, an owner selling, leasing, or otherwise disposing of a development to a purchaser who does not qualify under subdivision (e) shall certify under penalty of perjury that the owner has complied with all provisions of this section and Section

65863.10. This certification shall be recorded and shall contain a legal description of the property, shall be indexed to the name of the owner as grantor, and may be relied upon by good faith purchasers and encumbrances for value and without notice of a failure to comply with the provisions of this section.

Any person or entity acting solely in the capacity of an escrow agent for the transfer of real property subject to this section shall not be liable for any failure to comply with this section unless the escrow agent either had actual knowledge of the requirements of this section or acted contrary to written escrow instructions concerning the provisions of this section.

(o) The department shall undertake the following responsibilities and duties:

(1) Maintain a form containing a summary of rights and obligations under this section and make that information available to owners of assisted housing developments as well as to tenant associations, local nonprofit organizations, regional or national nonprofit organizations, public agencies, and other entities with an interest in preserving the state's subsidized housing.

(2) Compile, maintain, and update a list of entities in subdivision (d) that have either contacted the department with an expressed interest in purchasing a development in the subject area or have been identified by the department as potentially having an interest in participating in a right-of-first-refusal program. The department shall publicize the existence of the list statewide. Upon receipt of a notice of intent under Section 65863.10, the department shall make the list available to the owner proposing the termination, prepayment, or removal of government assistance or to the owner of an assisted housing development in which there will be the expiration of rental restrictions. If the department does not make the list available at any time, the owner shall only be required to send a written copy of the opportunity to submit an offer to purchase notice to the qualified entities which directly contact the owner and to post a copy of the notice in the common area pursuant to subdivision (g).

(p) (1) The provisions of this section may be enforced either in law or in equity by any qualified entity entitled to exercise the opportunity to purchase and right-of-first-refusal under this section, that has been adversely affected by an owner's failure to comply with this section.

(2) An owner may rely on the statements, claims, or representations of any person or entity that the person or entity is a qualified entity as specified in subdivision (d), unless the owner has actual knowledge that the purchaser is not a qualified entity.

(3) If the person or entity is not an entity as specified in subdivision (d), that fact, in the absence of actual knowledge as described in

paragraph (2), shall not give rise to any claim against the owner for a violation of this section.

(q) It is the intent of the Legislature that the provisions of this section are in addition to, but not preemptive of, applicable federal laws governing the sale, or other disposition of a development that would result in either (1) a discontinuance of its use as an assisted housing development or (2) the termination or expiration of any low-income use restrictions that apply to the development.

(r) This section shall remain in effect only until January 1, 2011, and as of that date is repealed, unless a later enacted statute, which is enacted on or before January 1, 2011, deletes or extends that date.

SEC. 4. Section 52097.1 of the Health and Safety Code is repealed.

SEC. 5. Section 41 of Chapter 434 of the Statutes of 2001 is amended to read:

Sec. 41. (a) The Department of Housing and Community Development shall adopt any regulations it deems necessary for the implementation of this act by October 30, 2003. Any regulations adopted by the Department of Housing and Community Development in Title 25 (commencing with Section 1) of the California Code of Regulations to implement and interpret this act shall be deemed editorial changes pursuant to the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of the Government Code), if they are substantially the same in content as the regulations currently in Chapter 2 (commencing with Section 1000) of Title 25 currently governing mobilehome parks and special occupancy parks.

(b) The Department of Housing and Community Development shall establish procedures that permit the identification of revenues received by the Mobilehome Parks and Special Occupancy Parks Revolving Fund and expenditures paid out of the fund as they relate to mobilehome parks and special occupancy parks.

SEC. 6. Section 44 of Chapter 434 of the Statutes of 2001 is amended to read:

Sec. 44. This act shall become operative on January 1, 2004, except for Section 41, which shall become operative on January 1, 2003, and Section 42, which shall become operative on January 1, 2002.

SEC. 7. Section 1 of this act shall not become operative if both this bill and SB 1468 are enacted and become effective on or before January 1, 2003, and both bills amend Section 65583 of the Government Code.

CHAPTER 1039

An act to amend Section 21080.10 of, to add Sections 21061.0.5, 21064.3, 21065.3, 21071, and 21072 to, to add Article 6 (commencing with Section 21159.20) to Chapter 4.5 of Division 13 of, to add and repeal Section 21159.25 of, and to repeal Sections 21080.7, 21080.14, 21085, and 21158.6 of, the Public Resources Code, relating to environmental quality.

[Approved by Governor September 28, 2002. Filed with Secretary of State September 28, 2002.]

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

SECTION 1. (a) It is the intent of the Legislature to assure protection of the environment and of the residents of agricultural employee housing, affordable housing, and urban infill housing while creating opportunities for the development of that housing and providing greater regulatory certainty to the developers of that housing by taking all of the following actions:

(1) Placing statutes that provide for a special review of housing projects under the California Environmental Quality Act, Division 13 (commencing with Section 21000) of the Public Resources Code, in a single part of the act.

(2) Providing specific standards for certain agricultural employee housing, affordable housing, and urban infill housing projects and by eliminating any general standard that applies to housing exemptions that is inconsistent with those provisions.

(3) Creating a streamlined procedure for agricultural employee housing, affordable housing, and urban infill housing projects that do not have an adverse effect on the environment.

(b) The Legislature finds and declares that encouraging infill housing will assist in reducing urban sprawl and the well-documented and harmful environmental effects caused by urban sprawl.

SEC. 2. Section 21061.0.5 is added to the Public Resources Code, to read:

21061.0.5. ''Infill site'' means a site in an urbanized area that meets either of the following criteria:

(a) The immediately adjacent parcels are developed with qualified urban uses or at least 75 percent of the perimeter of the site adjoins parcels that are developed with urban uses and the remaining 25 percent of the site adjoins parcels that have previously been developed for qualified urban uses, and the site has not been developed for urban uses and no parcel within the site has been created within the past 10 years.

(b) The site has been previously developed for qualified urban uses.

SEC. 3. Section 21064.3 is added to the Public Resources Code, to read:

21064.3. ''Major transit stop'' means a site containing an existing rail transit station, a ferry terminal served by either a bus or rail transit service, or the intersection of two or more major bus routes with a frequency of service interval of 15 minutes or less during the morning and afternoon peak commute periods.

SEC. 4. Section 21065.3 is added to the Public Resources Code, to read:

21065.3. ''Project-specific effect'' means all the direct or indirect environmental effects of a project other than cumulative effects and growth-inducing effects.

SEC. 5. Section 21071 is added to the Public Resources Code, to read:

21071. ''Urbanized area'' means either of the following:

(a) An incorporated city that meets either of the following criteria:

(1) Has a population of at least 100,000 persons.

(2) Has a population of less than 100,000 persons if the population of that city and not more than two contiguous incorporated cities combined equals at least 100,000 persons.

(b) An unincorporated area that satisfies the criteria in both paragraph (1) and (2) of the following criteria:

(1) Is either of the following:

(A) Completely surrounded by one or more incorporated cities, and both of the following criteria are met:

(i) The population of the unincorporated area and the population of the surrounding incorporated city or cities equals not less than 100,000 persons.

(ii) The population density of the unincorporated area at least equals the population density of the surrounding city or cities.

(B) Located within an urban growth boundary and has an existing residential population of at least 5,000 persons per square mile. For purposes of this subparagraph, an ''urban growth boundary'' means a provision of a locally adopted general plan that allows urban uses on one side of the boundary and prohibits urban uses on the other side.

(2) The board of supervisors with jurisdiction over the unincorporated area has previously taken both of the following actions:

(A) Issued a finding that the general plan, zoning ordinance, and related policies and programs applicable to the unincorporated area are consistent with principles that encourage compact development in a manner that does both of the following:

(i) Promotes efficient transportation systems, economic growth, affordable housing, energy efficiency, and an appropriate balance of jobs and housing.

(ii) Protects the environment, open space, and agricultural areas.

(B) Submitted a draft finding to the Office of Planning and Research at least 30 days prior to issuing a final finding, and allowed the office 30 days to submit comments on the draft findings to the board of supervisors.

SEC. 6. Section 21072 is added to the Public Resources Code, to read:

21072. ''Qualified urban use'' means any residential, commercial, public institutional, transit or transportation passenger facility, or retail use, or any combination of those uses.

SEC. 7. Section 21080.7 of the Public Resources Code is repealed.

SEC. 8. Section 21080.10 of the Public Resources Code is amended to read:

21080.10. This division does not apply to any of the following:

(a) An extension of time, granted pursuant to Section 65361 of the Government Code, for the preparation and adoption of one or more elements of a city or county general plan.

(b) Actions taken by the Department of Housing and Community Development or the California Housing Finance Agency to provide financial assistance or insurance for the development and construction of residential housing for persons and families of low or moderate income, as defined in Section 50093 of the Health and Safety Code, if the project that is the subject of the application for financial assistance or insurance will be reviewed pursuant to this division by another public agency.

SEC. 9. Section 21080.14 of the Public Resources Code is repealed.

SEC. 10. Section 21085 of the Public Resources Code is repealed.

SEC. 11. Section 21158.6 of the Public Resources Code is repealed.

SEC. 12. Article 6 (commencing with Section 21159.20) is added to Chapter 4.5 of Division 13 of the Public Resources Code, to read:

Article 6. Special Review of Housing Projects

21159.20. For the purposes of this article, the following terms have the following meanings:

(a) ''Census-defined place'' means a specific unincorporated land area within boundaries determined by the United States Census Bureau in the most recent decennial census.

(b) ''Community-level environmental review'' means either of the following:

(1) An environmental impact report certified on any of the following:

(A) A general plan.

(B) A revision or update to the general plan that includes at least the land use and circulation elements.

(C) An applicable community plan.

(D) An applicable specific plan.

(E) A housing element of the general plan, if the environmental impact report analyzed the environmental effects of the density of the proposed project.

(2) Pursuant to this division and the implementing guidelines adopted pursuant to this division that govern subsequent review following a program environmental impact report, or pursuant to Section 21157.1, 21157.5, or 21166, a negative declaration or mitigated negative declaration was adopted as a subsequent environmental review document, following and based upon an environmental impact report on any of the projects listed in subparagraphs (A), (C), or (D) of paragraph (1).

(c) ''Low-income households'' means households of persons and families of very low and low income, as defined in Sections 50093 and 50105 of the Health and Safety Code.

(d) ''Low- and moderate-income households'' means households of persons and families of low or moderate income, as defined in Section 50093 of the Health and Safety Code.

21159.21. A housing project qualifies for an exemption from this division pursuant to Section 21159.22, 21159.23, or 21159.24 if it meets the criteria in the applicable section and all of the following criteria:

(a) The project is consistent with any applicable general plan, specific plan, and local coastal program, including any mitigation measures required by a plan or program, as that plan or program existed on the date that the application was deemed complete and with any applicable zoning ordinance, as that zoning ordinance existed on the date that the application was deemed complete, unless the zoning of project property is inconsistent with the general plan because the project property has not been rezoned to conform with the general plan.

(b) Community-level environmental review has been adopted or certified.

(c) The project and other projects approved prior to the approval of the project can be adequately served by existing utilities, and the project applicant has paid, or has committed to pay, all applicable in-lieu or development fees.

(d) The site of the project does not contain wetlands, does not have any value as a wildlife habitat, and the project does not harm any species protected by the federal Endangered Species Act of 1973 (16 U.S.C. Sec. 1531 et seq.) or by the Native Plant Protection Act (Chapter 10 (commencing with Section 1900) of Division 2 of the Fish and Game Code), the California Endangered Species Act (Chapter 1.5 (commencing with Section 2050) of Division 3 of the Fish and Game Code, and the project does not cause the destruction or removal of any

species protected by a local ordinance in effect at the time the application for the project was deemed complete. For the purposes of this subdivision, ''wetlands'' has the same meaning as in Section 328.3 of Title 33 of the Code of Federal Regulations and ''wildlife habitat'' means the ecological communities upon which wild animals, birds, plants, fish, amphibians, and invertebrates depend for their conservation and protection.

(e) The site of the project is not included on any list of facilities and sites compiled pursuant to Section 65962.5 of the Government Code.

(f) The site of the project is subject to a preliminary endangerment assessment prepared by a registered environmental assessor to determine the existence of any release of a hazardous substance on the site and to determine the potential for exposure of future occupants to significant health hazards from any nearby property or activity.

(1) If a release of a hazardous substance is found to exist on the site, the release shall be removed, or any significant effects of the release shall be mitigated to a level of insignificance in compliance with state and federal requirements.

(2) If a potential for exposure to significant hazards from surrounding properties or activities is found to exist, the effects of the potential exposure shall be mitigated to a level of insignificance in compliance with state and federal requirements.

(g) The project does not have a significant effect on historical resources pursuant to Section 21084.1.

(h) The project site is not subject to any of the following:

(1) A wildland fire hazard, as determined by the Department of Forestry and Fire Protection, unless the applicable general plan or zoning ordinance contains provisions to mitigate the risk of a wildland fire hazard.

(2) An unusually high risk of fire or explosion from materials stored or used on nearby properties.

(3) Risk of a public health exposure at a level that would exceed the standards established by any state or federal agency.

(4) Within a delineated earthquake fault zone, as determined pursuant to Section 2622, or a seismic hazard zone, as determined pursuant to Section 2696, unless the applicable general plan or zoning ordinance contains provisions to mitigate the risk of an earthquake fault or seismic hazard zone.

(5) Landslide hazard, flood plain, flood way, or restriction zone, unless the applicable general plan or zoning ordinance contains provisions to mitigate the risk of a landslide or flood.

(i) (1) The project site is not located on developed open space.

(2) For the purposes of this subdivision, ''developed open space'' means land that meets all of the following criteria:

(A) Is publicly owned, or financed in whole or in part by public funds.

(B) Is generally open to, and available for use by, the public.

(C) Is predominantly lacking in structural development other than structures associated with open spaces, including, but not limited to, playgrounds, swimming pools, ballfields, enclosed child play areas, and picnic facilities.

(3) For the purposes of this subdivision, ''developed open space'' includes land that has been designated for acquisition by a public agency for developed open space, but does not include lands acquired by public funds dedicated to the acquisition of land for housing purposes.

(j) The project site is not located within the boundaries of a state conservancy.

21159.22. (a) This division does not apply to any development project that meets the requirements of subdivision (b), and meets either of the following criteria:

(1) Consists of the construction, conversion, or use of residential housing for agricultural employees, and meets all of the following criteria:

(A) Is affordable to lower income households, as defined in Section 50079.5 of the Health and Safety Code.

(B) Lacks public financial assistance.

(C) The developer of the development project provides sufficient legal commitments to the appropriate local agency to ensure the continued availability and use of the housing units for lower income households for a period of at least 15 years.

(2) Consists of the construction, conversion, or use of residential housing for agricultural employees and meets all of the following criteria:

(A) Is housing for very low, low-, or moderate-income households as defined in paragraph (2) of subdivision (h) of Section 65589.5 of the Government Code.

(B) Public financial assistance exists for the development project.

(C) The developer of the development project provides sufficient legal commitments to the appropriate local agency to ensure the continued availability and use of the housing units for low- and moderate-income households for a period of at least 15 years.

(b) (1) If the development project is proposed within incorporated city limits or within a census defined place with a minimum population density of at least 5,000 persons per square mile, it is located on a project site that is adjacent, on at least two sides, to land that has been developed, and consists of not more than 45 units, or is housing for a total of 45 or fewer agricultural employees if the housing consists of dormitories, barracks, or other group living facilities.

(2) If the development project is located on a project site zoned for general agricultural use, and consists of not more than 20 units, or is housing for a total of 20 or fewer agricultural employees if the housing consists of dormitories, barracks, or other group living facilities.

(3) The project satisfies the criteria in Section 21159.21.

(4) The development project is not more than five acres in area, except that a project site located in an area with a population density of at least 1,000 persons per square mile shall not be more than two acres in area.

(c) Notwithstanding subdivision (a), if a project satisfies the criteria described in subdivisions (a) and (b), but does not satisfy the criteria described in paragraph (1) of subdivision (b), this division does not apply to the project if the project meets all of the following criteria:

(1) Is located within either an incorporated city or a census-defined place.

(2) The population density of the incorporated city or census-defined place has a population density of at least 1,000 persons per square mile.

(3) The project site is adjacent on at least two sides to land that has been developed and the project consists of not more than 45 units, or the project consist of dormitories, barracks, or other group housing facilities for a total of 45 or fewer agricultural employees.

(d) Notwithstanding subdivision (c), this division shall apply to a project that meets the criteria described in subdivision (c) if a public agency that is carrying out or approving the project determines that there is a reasonable possibility that the project, if completed, would have a significant effect on the environment due to unusual circumstances or that the cumulative impacts of successive projects of the same type in the same area, over time, would be significant.

For the purposes of this section, ''agricultural employee'' has the same meaning as defined by subdivision (b) of Section 1140.4 of the Labor Code.

21159.23. (a) This division does not apply to any development project that consists of the construction, conversion, or use of residential housing consisting of 100 or fewer that is affordable to low-income households if both of the following criteria are met:

(1) The developer of the development project provides sufficient legal commitments to the appropriate local agency to ensure the continued availability and use of the housing units for lower income households, as defined in Section 50079.5 of the Health and Safety Code, for a period of at least 30 years, at monthly housing costs, as determined pursuant to Section 50053 of the Health and Safety Code.

(2) The development project meets all of the following requirements:

(A) The project satisfies the criteria described in Section 21159.21.

(B) The project site meets one of the following conditions:

(i) Has been previously developed for qualified urban uses.

(ii) The parcels immediately adjacent to the site are developed with qualified urban uses, or at least 75 percent of the perimeter of the site adjoins parcels that are developed with qualified urban uses and the remaining 25 percent of the perimeter of the site adjoins parcels that have previously been developed for qualified urban uses, and the site has not been developed for urban uses and no parcel within the site has been created within 10 years prior to the proposed development of the site.

(C) The project site is not more than five acres in area.

(D) The project site is located within an urbanized areaor within a census-defined place with a population density of at least 5,000 persons per square mile or, if the project consists of 50 or fewer units, within an incorporated city with a population density of at least 2,500 persons per square mile and a total population of at least 25,000 persons.

(b) Notwithstanding subdivision (a), if a project satisfies all of the criteria described in subdivision (a) except subparagraph (D) of paragraph (2) of that subdivision, this division does not apply to the project if the project is located within either an incorporated city or a census defined place with a population density of at least 1,000 persons per square mile.

(c) Notwithstanding subdivision (b), this division applies to a project that meets the criteria of subdivision (b), if there is a reasonable possibility that the project would have a significant effect on the environment or the residents of the project due to unusual circumstances or due to the related or cumulative impacts of reasonably foreseeable projects in the vicinity of the project.

(d) For the purposes of this section, ''residential'' means a use consisting of either of the following:

(1) Residential units only.

(2) Residential units and primarily neighborhood-serving goods, services, or retail uses that do not exceed 15 percent of the total floor area of the project.

21159.24. (a) Except as provided in subdivision (b), this division does not apply to a project if all of the following criteria are met:

(1) The project is a residential project on an infill site.

(2) The project is located within an urbanized area.

(3) The project satisfies the criteria of Section 21159.21.

(4) Within five years of the date that the application for the project is deemed complete pursuant to Section 65943 of the Government Code, community-level environmental review was certified or adopted.

(5) The site of the project is not more than four acres in total area.

(6) The project does not contain more than 100 residential units.

(7) Either of the following criteria are met:

(A) (i) At least 10 percent of the housing is sold to families of moderate income, or not less than 10 percent of the housing is rented to families of low income, or not less than 5 percent of the housing is rented to families of very low income.

(ii) The project developer provides sufficient legal commitments to the appropriate local agency to ensure the continued availability and use of the housing units for very low, low-, and moderate-income households at monthly housing costs determined pursuant to paragraph (2) of subdivision (h) of Section 65589.5 of the Government Code.

(B) The project developer has paid or will pay in-lieu fees pursuant to a local ordinance in an amount sufficient to result in the development of an equivalent number of units that would otherwise be required pursuant to subparagraph (A).

(8) The project is within one-half mile of a major transit stop.

(9) The project does not include any single level building that exceeds 100,000 square feet.

(10) The project promotes higher density infill housing. A project with a density of at least 20 units per acre shall be conclusively presumed to promote higher density infill housing. A project with a density of at least 10 units per acre and a density greater than the average density of the residential properties within 1,500 feet shall be presumed to promote higher density housing unless the preponderance of the evidence demonstrates otherwise.

(b) Notwithstanding subdivision (a), this division shall apply to a development project that meets the criteria described in subdivision (a), if any of the following occur:

(1) There is a reasonable possibility that the project will have a project-specific, significant effect on the environment due to unusual circumstances.

(2) Substantial changes with respect to the circumstances under which the project is being undertaken that are related to the project have occurred since community-level environmental review was certified or adopted:

(3) New information becomes available regarding the circumstances under which the project is being undertaken and that is related to the project, that was not known, and could not have been known at the time that community-level environmental review was certified or adopted.

(c) If a project satisfies the criteria described in subdivision (a), but is not exempt from this division as result of satisfying the criteria described in subdivision (b), the analysis of the environmental effects of the project in the environmental impact report or the negative declaration shall be limited to an analysis of the project-specific effect of the projects and any effects identified pursuant to paragraphs (2) or (3) of subdivision (b).

(d) For the purposes of this section, ''residential'' means a use consisting of either of the following:

(1) Residential units only.

(2) Residential units and primarily neighborhood-serving goods, services, or retail uses that do not exceed 15 percent of the total floor area of the project.

21159.25. (a) For a project in the City of Oakland that consists of multiple-family residential development, or a residential and commercial or retail mixed-use development with not more than 25 percent of the total floor area of the project utilized as retail space, a focused environmental impact report may be prepared, notwithstanding that the project was not identified in a master environmental impact report, if all of the following conditions are met:

(1) The Oakland City Council does both of the following:

(A) Authorizes the implementation of this section. The city council may authorize the implementation of this section only by voting to approve the practice of preparing focused environmental impact reports for projects in the central business district housing target areas specified in paragraph (11).

(B) Determines that the general plan, zoning ordinance, and related policies and programs are consistent with principles that encourage compact development in a manner that does both of the following:

(i) Promotes efficient transportation systems, economic growth, affordable housing, energy efficiency, and an appropriate balance of jobs and housing.

(ii) Protects the environment, open space, and agricultural areas.

(2) The city submits a draft determination to the Office of Planning and Research that the applicable general plan, zoning ordinance, and any related policies and programs are consistent with the principles described in subparagraph (B) of paragraph (1) prior to the city council making its determination regarding that consistency. The office may submit comments on the draft findings to the city council within 30 days from the date that the city submits the draft determination to the office.

(3) The city has an average population density of at least 5,000 persons per square mile.

(4) The project is consistent with the general plan, any applicable specific plan and community plan, and zoning ordinance, including any variance that is properly granted pursuant to that zoning ordinance, an environmental impact report was prepared for the general plan, and the application for the project is deemed complete pursuant to Section 65943 of the Government Code within three years of the date this section is effective.

(5) The lead agency cannot make the finding described in subdivision (c) of Section 21157.1, a negative declaration or mitigated negative

declaration cannot be prepared pursuant to Section 21080, 21157.5, or 21158, and Section 21166 does not apply.

(6) The project meets one or both of the following conditions:

(A) The parcel on which the project is to be developed is surrounded by immediately contiguous urban development.

(B) The parcel on which the project is to be developed is, or has been previously, developed with urban uses.

(7) The density of the project is at least 40 units per net acre.

(8) The parcel on which the project is to be developed is within one-half mile of an existing rail transit station.

(9) The project can be adequately served by existing utilities and municipal services, and there will be adequate capacity for infrastructure, utilities, and services to serve other projects approved and proposed in the service area.

(10) The project does not include a single level building that exceeds 100,000 square feet.

(11) The project is located in one of the following central business district housing target areas:

(A) The Valdez cluster, which is bounded on the west by Telegraph Avenue, on the south by 23rd Street, on the east by Harrison Street, and on the north by 27th Street. A project located in this cluster that meets the condition described in paragraph (8) may include a portion up to one acre that does not meet that condition.

(B) The Uptown cluster, which is bounded on the west by Castro Street, on the south by 14th Street from Castro Street to Jefferson Street and 16th Street and Broadway from 16th Street to 22nd Street, and on the north by 22nd Street.

(C) The 11th Street cluster, which is bounded by Franklin Street from 12th Street to 15th Street, by Webster Street from 11th Street to 12th Street, by Alice Street from 11th Street to 13th Street, by 12th Street from Franklin Street to Webster Street, by 11th Street from Webster Street to Alice Street and 13th Street from Alice Street to Madison Street, and on the east by Madison Street from 13th Street to 15th Street, and on the north by 15th Street from Franklin Street to Madison Street.

(D) The Old Oakland cluster, which is bounded on the west by Castro Street, on the south by 7th Street, on the east by Broadway, and on the north by 11th Street.

(b) A focused environmental impact report prepared pursuant to this section shall be limited to a discussion of potentially significant effects on the environment specific to the project. No discussion shall be required of alternatives to the project, cumulative impacts of the project, or the growth inducing impacts of the project.

(c) (1) On or before July 1, 2004, the city shall submit a report to the Office of Planning and Research that includes, but that is not necessarily limited to, all of the following information:

(A) The number of focused environmental impact reports prepared pursuant to this section.

(B) The types of projects for which focused environmental impact reports prepared pursuant to this section.

(C) The time periods for preparing each of the focused environmental impact reports prepared pursuant to this section, and for acting on each project from the date that the application was deemed complete.

(D) A description of any alternatives to a project, cumulative impacts of a project, growth inducing impacts of a project, or other issues that may have been identified and analyzed if an environmental document, other than a focused environmental impact report, had been prepared for the project.

(2) Prior to submitting the report to the office pursuant to paragraph (1), the city shall hold at least one public hearing and shall respond to oral and written comments regarding the draft report. The city shall include the comments and responses in the final report.

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

21159.26. With respect to a project that includes a housing development, a public agency may not reduce the proposed number of housing units as a mitigation measure or project alternative for a particular significant effect on the environment if it determines that there is another feasible specific mitigation measure or project alternative that would provide a comparable level of mitigation. This section does not affect any other requirement regarding the residential density of that project.

21159.27. A project may not be divided into smaller projects to qualify for one or more exemptions pursuant to this article.

CHAPTER 1040

An act to add Article 3.5 (commencing with Section 92625) to Chapter 6 of Part 57 of the Education Code, relating to the University of California.

[Approved by Governor September 28, 2002. Filed with Secretary of State September 28, 2002.]

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

SECTION 1. Article 3.5 (commencing with Section 92625) is added to Chapter 6 of Part 57 of the Education Code, to read:

Article 3.5. Cardcheck Agreements

92625. The Legislature finds and declares all of the following:

(a) In the course of fulfilling its educational mission, the University of California is required to participate in the marketplace, both as a purchaser of goods and services and as a provider of services to its customers, such as students who contract with the university for room and board and medical consumers who utilize the university's hospitals and clinics. In that role, the university also functions as a proprietor of real property and other physical assets located at its campuses and medical facilities.

(b) In the marketplace, the university must make prudent business decisions, as does any private business entity, to ensure efficient and cost-effective management of its business concerns, and to maximize benefit and minimize risk. One of those risks is the possibility of labor-management conflict arising out of labor union organizing campaigns. This conflict can adversely affect the university's operation of facilities in which it has a proprietary business interest by causing an interruption in service.

(c) A major potential source of labor-management conflict that threatens the economic interests of the university as a participant in the marketplace is the possibility of economic action taken by labor unions against employers when labor unions seek to organize their workers over employer opposition to unionization. Experience has demonstrated that organizing drives pursuant to formal and adversarial union certification processes often deteriorate into protracted and acrimonious labor-management conflicts.

(d) One way to reduce risk where the university has a proprietary interest in the operation of its facilities is to require, as a condition of the university's entering into a lease or service contract, that employers operating in the facility agree to a lawful, nonconfrontational alternative process for resolving a union organizing campaign. That alternative process is a so-called ''cardcheck,'' wherein employee preference regarding whether or not to be represented by a labor union to act as their exclusive collective bargaining representative is determined based on signed authorization cards. Private employers are authorized under existing federal law to agree voluntarily to use this procedure in lieu of election procedures under the supervision of the National Labor Relations Board.

(e) The sole purpose of this article is to protect the university's proprietary interest in the operation of its facilities and to assume the university's ability to procure and provide uninterrupted services in the marketplace. This article is not enacted to favor any particular outcome in the determination of employee preference regarding union representation, nor to skew the procedures in that determination to favor or hinder any party to the determination. Likewise, this article is not intended to enact or express any generally applicable policy regarding labor-management relations, or to regulate those relations in any way, but is intended only to protect the university's proprietary interest as a participant in the marketplace.

92625.1. As used in this article:

(a) ''Cardcheck agreement'' means a written agreement between an employer and a labor organization providing a procedure for determining employee preference on the subject of whether to be represented by a labor organization for collective bargaining, and if so, by which labor organization to be represented, that provides, at a minimum, the following:

(1) The determination of employee preference regarding union representation shall be by a cardcheck procedure conducted by a neutral third party in lieu of a formal election.

(2) All disputes over interpretation or application of the parties' cardcheck agreement, and over issues regarding how to carry out the cardcheck process or specific cardcheck procedures shall be submitted to binding arbitration.

(3) The forbearance by any labor organization from economic action against the employer at the worksite of an organizing drive covered by this section, and in relation to an organizing campaign only (not to the terms of a collective bargaining agreement), so long as the employer complies with the terms of the cardcheck agreement.

(4) Language and procedures prohibiting the labor organization or the employer from coercing or intimidating employees, explicitly or implicitly, in selecting or not selecting a bargaining representative.

(b) ''Collective bargaining agreement'' means an agreement between an employer and a labor organization regarding wages, hours, and other terms and conditions of employment of the employer's employees. For purposes of this article, a collective bargaining agreement does not include a cardcheck agreement as defined in subdivision (a).

(c) ''Facility'' means any campus, school, cafeteria, store, hospital, clinic, institute, laboratory, or office owned or operated by the university, or at which the normal educational or administrative functions of the university are conducted.

(d) ''Labor organization'' means any organization of any kind, or any agency or employee representation committee or plan, in which

employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions or work.

(e) ''Proprietary interest'' means any nonregulatory arrangement or circumstances in which the financial or other nonregulatory interests of the university in a service contract could be adversely affected by labor-management conflict or consumer boycotts potentially resulting from a union organizing campaign.

(f) ''Service contract'' means a lease, management agreement, service agreement, loan bond, guarantee, or other similar agreement to which the university is a party and in which the university has a proprietary interest.

(g) ''Service contractor'' means an individual, corporation, unincorporated association, partnership, or other entity, other than a collection agency retained by the university to enforce a financial obligation owed to the university, that, pursuant to a service contract, provides goods or services to the university.

(h) ''University'' means the University of California and its governing body, the Regents of the University of California.

92625.3. (a) A service contractor shall enter into and comply with a cardcheck agreement, as defined in Section 92625.1, with any labor organization that requests the agreement for the purpose of seeking to represent the service contractor's employees performing services covered by the service contract. If a service contractor enters into a cardcheck agreement with a labor organization, it shall offer that same agreement to any other labor organization seeking to represent the service contractor's employees. Any labor organization that was not a party to the initial cardcheck agreement may, in its discretion, reject the terms negotiated by the first union, and negotiate for a different cardcheck agreement. In the event that a labor organization and the service contractor are unable to negotiate an agreement within the 30-day period, this section shall apply.

(b) The university shall include in any service contract a provision requiring any service contractor to abide by the requirements imposed under subdivision (a) as essential consideration for the university entering into the service contract.

(c) All requests for proposals or invitations to bid or similar documents regarding service contracts shall include a summary description of, and reference to, the policy and requirements of this article. Failure to include the description or reference to this article in a document may not exempt any service contractor otherwise subject to the requirements of this article.

(d) This article may not apply to any service contractor signatory to a valid and binding collective bargaining agreement covering the terms

and conditions of employment for its employees performing services subject to the service contract, which includes a no-strike provision, and which extends at least through the term of the service contract.

92625.5. The university or any other interested party may bring an action for an injunction or specific performance in order to secure compliance with the requirements of this article. The university shall also have the right to terminate the service contract, upon 30 days' written notice to the service contractor, to cure its breach, where the service contractor has failed to comply with the requirements of this article.

92625.7. If any provision of this article is declared illegal, invalid, or inoperative, in whole or in part, by any court of competent jurisdiction, the remaining provisions and portions thereof and applications not declared illegal, invalid, or inoperative shall remain in full force or effect. Nothing in this article may be construed to impair any contractual obligations of the university. This article may not be applied to the extent it will cause the loss of any federal or state funding of university activities.

92625.9. This article shall apply to the University of California only to the extent that the Regents of the University of California act, by resolution, to make it applicable.

CHAPTER 1041

An act to amend Section 3504.5 of the Government Code, relating to public employment.

[Approved by Governor September 28, 2002. Filed with Secretary of State September 28, 2002.]

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

SECTION 1. Section 3504.5 of the Government Code is amended to read:

3504.5. (a) Except in cases of emergency as provided in this section, the governing body of a public agency, and boards and commissions designated by law or by the governing body of a public agency, shall give reasonable written notice to each recognized employee organization affected of any ordinance, rule, resolution, or regulation directly relating to matters within the scope of representation proposed to be adopted by the governing body or the designated boards and commissions and shall give the recognized employee organization

the opportunity to meet with the governing body or the boards and commissions.

(b) In cases of emergency when the governing body or the designated boards and commissions determine that an ordinance, rule, resolution, or regulation must be adopted immediately without prior notice or meeting with a recognized employee organization, the governing body or the boards and commissions shall provide notice and opportunity to meet at the earliest practicable time following the adoption of the ordinance, rule, resolution, or regulation.

(c) The governing body of a public agency with a population in excess of 4,000,000, or the boards and commissions designated by the governing body of such a public agency shall not discriminate against employees by removing or disqualifying them from a health benefit plan, or otherwise restricting their ability to participate in a health benefit plan, on the basis that the employees have selected or supported a recognized employee organization. Nothing in this section shall be construed to prohibit the governing body of a public agency or the board or commission of a public agency and a recognized employee organization from agreeing to health benefit plan enrollment criteria or eligibility limitations.

SEC. 2. The amendments made by this act to Section 3504.5 of the Government Code shall be retroactive to July 1, 2001.

CHAPTER 1042

An act to add Section 14998.55 to the Government Code, and to add Section 335 to the Unemployment Insurance Code, relating to employment, and making an appropriation therefor.

[Approved by Governor September 28, 2002. Filed with Secretary of State September 28, 2002.]

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

SECTION 1. Section 14998.55 is added to the Government Code, to read:

14998.55. The commission shall release annually the number of motion picture starts that occurred within the State of California.

SEC. 2. Section 335 is added to the Unemployment Insurance Code, to read:

335. The department, in consultation and coordination with the film and movie industry, the Technology, Trade, and Commerce Agency, and the California Film Commission shall do all of the following, contingent

upon the appropriation of funds in the annual Budget Act for these specified purposes:

(a) Research and maintain data on the employment and output of the film industry, including full-time, part-time, contract, and short duration or single event employees.

(b) Examine the ethnic diversity and representation of minorities in the entertainment industry.

(c) Determine the overall direct and indirect economic impact of the film industry.

(d) Monitor film industry employment and activity in other states and countries that compete with California for film production.

(e) Review the effect that federal and state laws and local ordinances have on the filmed entertainment industry.

(f) Prepare and release biannually a report to the chairpersons of the appropriate Senate and Assembly policy committees that details the information required by this section.

CHAPTER 1043

An act to add Sections 59008, 59104, and 59205 to the Education Code, relating to the state special schools and diagnostic centers.

[Approved by Governor September 28, 2002. Filed with Secretary of State September 28, 2002.]

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

SECTION 1. Section 59008 is added to the Education Code, to read:

59008. (a) The Department of Personnel Administration shall consider making salaries for teachers, specialists, and administrators of the California School for the Deaf competitive with the salaries of similarly qualified school teachers, specialists, and administrators who are employed by the encompassing school districts.

(b) For purposes of this section, ''teachers,'' ''teacher specialists,'' and ''administrators'' means those individuals who hold the appropriate teaching, service, or teaching and administrative credential, as appropriate, as issued by the Commission on Teacher Credentialing, as determined by the employing state agency.

SEC. 2. Section 59104 is added to the Education Code, to read:

59104. (a) The Department of Personnel Administration shall consider making salaries for teachers, specialists, and administrators of the California School for the Blind competitive with the salaries of

similarly qualified school teachers, specialists, and administrators who are employed by the encompassing school districts.

(b) For purposes of this section, ''teachers,'' ''teacher specialists,'' and ''administrators'' means those individuals who hold the appropriate teaching, service, or teaching and administrative credential, as appropriate, as issued by the Commission on Teacher Credentialing, as determined by the employing state agency.

SEC. 3. Section 59205 is added to the Education Code, to read:

59205. (a) The Department of Personnel Administration shall consider making salaries for teachers, specialists, and administrators of the Diagnostic Center, Southern California, the Diagnostic Center, Central California, and the Diagnostic Center, Northern California, competitive with the salaries of similarly qualified school teachers, specialists, and administrators who are employed by the encompassing school districts.

(b) For purposes of this section, ''teachers,'' ''teacher specialists,'' and ''administrators'' means those individuals who hold the appropriate teaching, service, or teaching and administrative credential, as appropriate, as issued by the Commission on Teacher Credentialing, as determined by the employing state agency.

CHAPTER 1044

An act to add and repeal Section 19836.1 of the Government Code, relating to state employees.

[Approved by Governor September 28, 2002. Filed with Secretary of State September 28, 2002.]

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

SECTION 1. Section 19836.1 is added to the Government Code, to read:

19836.1. (a) For purposes of this section:

(1) ''Excluded employee'' means the same as in subdivision (b) of Section 3527.

(2) ''Excluded employee organization'' means the same as in subdivision (d) of Section 3527.

(3) ''Exempt employee'' means a state employee who is exempt pursuant to subdivision (e), (f), or (g) of Section 4 of Article VII of the California Constitution.

(b) There is in state government the State Excluded and Exempt Employees Salary-Setting Task Force, which shall be formed to create

a new process to address the status of salary and benefit levels of excluded and exempt employees. The task force shall, prior to July 1, 2004, recommend to the Governor and the Legislature a process that can identify and implement equitable salary and benefit changes over time for excluded and exempt positions in state government.

(c) The task force shall consist of no more than 12 participants. Six participants representing state management shall be appointed by the Director of the Department of Personnel Administration and six participants shall be appointed by excluded employee organizations registered with the state. No person may receive compensation for serving as a member except that release time shall be granted by the state for employee organization members who are employed by the State of California. The chair of the task force shall be the Director of the Department of Personnel Administration, or his or her designee.

(d) Any process recommended by the task force shall at least include consideration of the following:

(1) The cost of living, as reflected in the Consumer Price Index, the West Coast Index, and other key California statistics from the Bureau of Labor Statistics of the United States Department of Labor, San Francisco and Los Angeles.

(2) Compensation paid to comparable occupations or benchmark classes in California cities, counties, and special districts, the University of California System, the California State University, the federal government, and the private sector.

(3) Wages, benefits, and other compensation paid to rank-and-file state employees under approved memoranda of understanding.

(4)Excluded employee salaries, benefits, and other compensation items.

(e) In preparing its recommendation, the task force shall consider the history of excluded employee salary and benefit changes, the timing of the change in the compensation process, factors affecting excluded employee compensation, and the provisions of the excluded employee compensation package.

(f) The State Excluded and Exempt Employees Salary-Setting Task Force shall remain in existence until June 30, 2005, and as of that date this section is inoperative. This section is repealed as of January 1, 2006, unless a later enacted statute, enacted on or before January 1, 2006, deletes or extends that date and the task force's existence.

CHAPTER 1045

An act to amend Section 20305 of the Government Code, relating to public employees' retirement, and making an appropriation therefor.

[Approved by Governor September 28, 2002. Filed with Secretary of State September 28, 2002.]

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

SECTION 1. Section 20305 of the Government Code is amended to read:

20305. (a) An employee serving on a less than full-time basis is excluded from this system unless:

(1) He or she is a member at the time he or she renders less than full-time service and is not otherwise excluded pursuant to this article or by a provision of a contract.

(2) His or her position requires regular, part-time service for one year or longer for at least an average of 20 hours a week, or requires service that is equivalent to at least an average of 20 hours a week, unless he or she elects membership pursuant to Section 20325.

(3) His or her employment is, in the opinion of the board, on a seasonal, limited-term, on-call, emergency, intermittent, substitute, or other irregular basis, and is compensated and meets one of the following conditions:

(A) The appointment or employment contract fixes a term of full-time, continuous employment in excess of six months or, if a term is not fixed, full-time employment continues for longer than six months, in which case membership shall be effective not later than the first day of the first pay period of the seventh month of employment.

(B) The person works more than 125 days, if employed on a per diem basis or, if employed on other than a per diem basis, 1,000 hours within the fiscal year, in which case, membership shall be effective not later than the first day of the first pay period of the month following the month in which 125 days or 1,000 hours of service were completed. For purposes of this subdivision, ''day'' means each eight-hour period of employment worked by an employee paid on a per diem basis so that membership is effective after he or she has completed 1,000 hours of compensated service in a fiscal year.

(C) The person is employed by the Department of Forestry and Fire Protection in one of the positions that provide state safety membership pursuant to Section 20400 or state peace officer/firefighter membership pursuant to Section 20392.

(4) He or she is a temporary faculty member of the California State University and meets one of the following conditions:

(A) He or she works two consecutive semesters or three consecutive quarters at half-time or more, and is not otherwise excluded pursuant to this article, in which case, membership shall be effective with the start of the next consecutive semester or quarter if the appointment requires service of half-time or more.

(B) He or she works two consecutive semesters or three consecutive quarters at a minimum teaching load of six weighted units, and is not otherwise excluded pursuant to this article, in which case membership shall be effective at the start of the next consecutive semester or quarter, but not earlier than July 1, 2004, if the appointment requires service of six weighted units or more. This subparagraph does not apply to faculty members unless provided for in a memorandum of understanding agreed upon, on or after January 1, 2003, pursuant to Chapter 12 (commencing with Section 3560) of Division 4 of Title 1, or authorized by the Trustees of the California State University for employees excluded from collective bargaining.

(5) He or she is a member of the Board of Prison Terms, the State Personnel Board, or the State Air Resources Board and elects to become a member pursuant to Section 20320.

(6) He or she is participating in partial service retirement, pursuant to Article 1.7 (commencing with Section 19996.30) of Chapter 7 of Part 2.6.

(7) He or she is included by specific provision of the board relating to the exclusion of less than full-time employees.

(b) This section shall supersede any contract provision excluding persons in any temporary or seasonal employment basis and shall apply only to persons entering employment on and after January 1, 1975. Except as provided in Section 20502, no contract or contract amendment entered into after January 1, 1981, shall contain any provision excluding persons on an irregular employment basis.

CHAPTER 1046

An act to amend Sections 3562 and 3593 of the Government Code, relating to higher education labor relations.

[Approved by Governor September 28, 2002. Filed with Secretary of State September 28, 2002.]

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

SECTION 1. Section 3562 of the Government Code is amended to read:

3562. As used in this chapter:

(a) ''Arbitration'' means a method of resolving a rights dispute under which the parties to a controversy must accept the award of a third party.

(b) ''Board'' means the Public Employment Relations Board established pursuant to Section 3513.

(c) ''Certified organization'' means an employee organization that has been certified by the board as the exclusive representative of the employees in an appropriate unit after a proceeding under Article 5 (commencing with Section 3573).

(d) ''Confidential employee'' means any employee who is required to develop or present management positions with respect to meeting and conferring or whose duties normally require access to confidential information which contributes significantly to the development of those management positions.

(e) ''Employee'' or ''higher education employee'' means any employee of the Regents of the University of California, the Directors of Hastings College of the Law, or the Trustees of the California State University. However, managerial and confidential employees and employees whose principal place of employment is outside the State of California at a worksite with 100 or fewer employees shall be excluded from coverage under this chapter. The board may find student employees whose employment is contingent on their status as students are employees only if the services they provide are unrelated to their educational objectives, or, that those educational objectives are subordinate to the services they perform and that coverage under this chapter would further the purposes of this chapter.

(f) (1) ''Employee organization'' means any organization of any kind in which higher education employees participate and that exists for the purpose, in whole or in part, of dealing with higher education employers concerning grievances, labor disputes, wages, hours, and other terms and conditions of employment of employees. An organization that represents one or more employees whose principal worksite is located outside the State of California is an employee organization only if it has filed with the board and with the employer a statement agreeing, in consideration of obtaining the benefits of status as an employee organization pursuant to this chapter, to submit to the jurisdiction of the board. The board shall promulgate the form of the statement.

(2) ''Employee organization'' shall also include any person that an employee organization authorizes to act on its behalf. An academic senate, or other similar academic bodies, or divisions thereof, shall not be considered employee organizations for the purposes of this chapter.

(g) ''Employer'' or ''higher education employer'' means the regents in the case of the University of California, the Directors in the case of

Hastings College of the Law, and the trustees in the case of the California State University, including any person acting as an agent of an employer.

(h) ''Employer representative'' means any person or persons authorized to act in behalf of the employer.

(i) ''Exclusive representative'' means any recognized or certified employee organization or person it authorizes to act on its behalf.

(j) ''Impasse'' means that the parties have reached a point in meeting and conferring at which their differences in positions are such that further meetings would be futile.

(k) ''Managerial employee'' means any employee having significant responsibilities for formulating or administering policies and programs. No employee or group of employees shall be deemed to be managerial employees solely because the employee or group of employees participates in decisions with respect to courses, curriculum, personnel, and other matters of educational policy. A department chair or head of a similar academic unit or program who performs the foregoing duties primarily on behalf of the members of the academic unit or program shall not be deemed a managerial employee solely because of those duties.

(*l*) ''Mediation'' means the efforts of a third person, or persons, functioning as intermediaries, to assist the parties in reaching a voluntary resolution to an impasse.

(m) ''Meet and confer'' means the performance of the mutual obligation of the higher education employer and the exclusive representative of its employees to meet at reasonable times and to confer in good faith with respect to matters within the scope of representation and to endeavor to reach agreement on matters within the scope of representation. The process shall include adequate time for the resolution of impasses. If agreement is reached between representatives of the higher education employer and the exclusive representative, they shall jointly prepare a written memorandum of the understanding, which shall be presented to the higher education employer for concurrence. However, these obligations shall not compel either party to agree to any proposal or require the making of a concession.

(n) ''Person'' means one or more individuals, organizations, associations, corporations, boards, committees, commissions, agencies, or their representatives.

(o) ''Professional employee'' means:

(1) Any employee engaged in work: (A) predominantly intellectual and varied in character as opposed to routine mental, manual, mechanical, or physical work; (B) involving the consistent exercise of discretion and judgment in its performance; (C) of a character so that the output produced or the result accomplished cannot be standardized in relation to a given period of time; and (D) requiring knowledge of an advanced type in a field of science or learning customarily acquired by

a prolonged course of specialized intellectual instruction and study in an institution of higher learning or a hospital, as distinguished from a general academic education or from an apprenticeship or from training in the performance of routine mental, manual, or physical processes.

(2) Any employee who: (A) has completed the courses of specialized intellectual instruction and study described in subparagraph (D) of paragraph (1), and (B) is performing related work under the supervision of a professional person to qualify himself or herself to become a professional employee as defined in paragraph (1).

(p) ''Recognized organization'' means an employee organization that has been recognized by an employer as the exclusive representative of the employees in an appropriate unit pursuant to Article 5 (commencing with Section 3573).

(q) (1) For purposes of the University of California only, ''scope of representation'' means, and is limited to, wages, hours of employment, and other terms and conditions of employment. The scope of representation shall not include any of the following:

(A) Consideration of the merits, necessity, or organization of any service, activity, or program established by law or resolution of the regents or the directors, except for the terms and conditions of employment of employees who may be affected thereby.

(B) The amount of any fees that are not a term or condition of employment.

(C) Admission requirements for students, conditions for the award of certificates and degrees to students, and the content and supervision of courses, curricula, and research programs, as those terms are intended by the standing orders of the regents or the directors.

(D) Procedures and policies to be used for the appointment, promotion, and tenure of members of the academic senate, the procedures to be used for the evaluation of the members of the academic senate, and the procedures for processing grievances of members of the academic senate. The exclusive representative of members of the academic senate shall have the right to consult and be consulted on matters excluded from the scope of representation pursuant to this subparagraph. If the academic senate determines that any matter in this subparagraph should be within the scope of representation, or if any matter in this subparagraph is withdrawn from the responsibility of the academic senate, the matter shall be within the scope of representation.

(2) All matters not within the scope of representation are reserved to the employer and may not be subject to meeting and conferring, provided that nothing herein may be construed to limit the right of the employer to consult with any employees or employee organization on any matter outside the scope of representation.

(r) (1) For purposes of the California State University only, ''scope of representation'' means, and is limited to, wages, hours of employment, and other terms and conditions of employment. The scope of representation shall not include:

(A) Consideration of the merits, necessity, or organization of any service, activity, or program established by statute or regulations adopted by the trustees, except for the terms and conditions of employment of employees who may be affected thereby.

(B) The amount of any student fees that are not a term or condition of employment.

(C) Admission requirements for students, conditions for the award of certificates and degrees to students, and the content and conduct of courses, curricula, and research programs.

(D) Criteria and standards to be used for the appointment, promotion, evaluation, and tenure of academic employees, which shall be the joint responsibility of the academic senate and the trustees. The exclusive representative shall have the right to consult and be consulted on matters excluded from the scope of representation pursuant to this subparagraph. If the trustees withdraw any matter in this subparagraph from the responsibility of the academic senate, the matter shall be within the scope of representation.

(E) The amount of rental rates for housing charged to California State University employees.

(2) All matters not within the scope of representation are reserved to the employer, and may not be subject to meeting and conferring, provided that nothing herein may be construed to limit the right of the employer to consult with any employees or employee organization on any matter outside the scope of representation.

SEC. 2. Section 3593 of the Government Code is amended to read:

3593. (a) If the dispute is not settled within 30 days after the appointment of the panel, or, upon agreement by both parties, within a longer period, the panel shall make findings of fact and recommend terms of settlement, which recommendations shall be advisory only. Any findings of fact and recommended terms of settlement shall be submitted in writing to the parties privately before they are made public. The panel, subject to the rules and regulations of the board, may make those findings and recommendations public 10 days thereafter. During this 10-day period, the parties are prohibited from making the panel's findings and recommendations public.

(b) The costs for the services of the panel chairman, including per diem fees, if any, and actual and necessary travel and subsistence expenses, shall be borne by the board. Any other mutually incurred costs shall be borne equally by the employer and the exclusive representative. Each party shall bear the costs it incurs for the panel member it selects.

(c) (1) This subdivision applies only to disputes relating to the faculty and librarians of the University of California and the Hastings College of the Law. For the purposes of this subdivision, ''faculty'' means teachers employed to teach courses and authorize the granting of credit for the successful completion of courses, and excludes employees whose employment is contingent on their status as students.

(2) Irrespective of whether the panel makes its findings and recommendations public pursuant to subdivision (a), the Regents of the University of California and the Directors of the Hastings College of the Law, as appropriate, shall make the findings and recommendations of the panel public after the 10-day period prescribed by subdivision (a) has ended. These findings and recommendations shall be posted in a prominent public place, and copies of the findings and recommendations shall be made available to any person attending the next regularly scheduled public meeting of the regents or the directors, as appropriate. The publicly distributed agenda of the next regularly scheduled meeting of the regents or the directors, as appropriate, shall reference the availability of these findings and recommendations.

(3) It is the intent of the Legislature that the regents or the directors, as appropriate, shall act upon the findings and recommendations of the panel at an open and public meeting within 90 days of their submission to the parties by the panel.

CHAPTER 1047

An act to add Chapter 7.5 (commencing with Section 71800) to Title 8 of the Government Code, relating to courts.

[Approved by Governor September 28, 2002. Filed with Secretary of State September 28, 2002.]

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

SECTION 1. The Legislature finds and declares as follows:

(a) Court interpreters provide constitutionally mandated sign and spoken language services to the court, attorneys, defendants, victims, and witnesses in trial court proceedings. These services are vital to ensuring access and fairness in the trial courts. The purpose of this act is to provide for the fair treatment of court interpreters, to enhance access to the court system for persons who depend upon the services of interpreters, and to promote sound court management.

(b) The intent of the Legislature is to provide that the trial courts shall make an orderly transition from relying on independent contractors to

using employees for interpretation services. Accordingly, this act provides for a transition period of up to two years during which the trial courts shall hire as employees court interpreters pro tempore who shall perform work as needed on a per diem basis. After the transition period, the trial courts may continue to employ court interpreters pro tempore as well as create other interpreter classifications.

SEC. 2. Chapter 7.5 (commencing with Section 71800) is added to Title 8 of the Government Code, to read:

CHAPTER 7.5. TRIAL COURT INTERPRETER EMPLOYMENT AND LABOR RELATIONS ACT

71800. This chapter shall be known and may be cited as the Trial Court Interpreter Employment and Labor Relations Act.

71801. For purposes of this chapter, the following definitions shall apply:

(a) ''Certified interpreter'' and ''registered interpreter'' have the same meanings as in Article 4 (commencing with Section 68560) of Chapter 2. This chapter does not apply to sign language interpreters.

(b) ''Cross-assign'' and "cross-assignment'' refer to the appointment of a court interpreter employed by a trial court to perform spoken language interpretation services in another trial court, pursuant to Section 71810.

(c) ''Employee organization'' means a labor organization that has as one of its purposes representing employees in their relations with the trial courts.

(d) ''Mediation'' means effort by an impartial third party to assist in reconciling a dispute regarding wages, hours, and other terms and conditions of employment between representatives of the trial court or regional court interpreter committee and the recognized employee organization through interpretation, suggestion, and advice.

(e) ''Meet and confer in good faith'' means that a trial court or regional court interpreter committee or those representatives it may designate, and representatives of a recognized employee organization, shall have the mutual obligation personally to meet and confer promptly upon request by either party and continue for a reasonable period of time in order to exchange freely information, opinions, and proposals, and to endeavor to reach agreement on matters within the scope of representation. The process shall include adequate time for the resolution of impasses where specific procedures for resolution are contained in this chapter, or when the procedures are used by mutual consent.

(f) ''Personnel rules,'' ''personnel policies, procedures, and plans,'' and ''rules and regulations'' mean policies, procedures, plans, rules, or

regulations adopted by a trial court or its designee pertaining to conditions of employment of trial court employees, subject to meet and confer in good faith.

(g) ''Recognized employee organization'' means an employee organization that has been formally acknowledged to represent the court interpreters employed by the trial courts in a region, pursuant to this chapter.

(h) ''Regional court interpreter employment relations committee'' means the committee established pursuant to Section 71807.

(i) ''Regional transition period'' means the period from January 1, 2003, to January 1, 2005, inclusive, except that the transition period for the region may be terminated earlier by a memorandum of understanding or agreement between the regional court interpreter employment relations committee and a recognized employee organization.

(j) ''Transfer'' means transfer within the trial court as defined in the trial court's personnel policies, procedures, and plans, subject to meet and confer in good faith.

(k) ''Trial court'' means the supreme court in each county.

71802. (a) On and after July 1, 2003, trial courts shall appoint trial court employees, rather than independent contractors, to perform spoken language interpretation of trial court proceedings. An interpreter may be an employee of the trial court or an employee of another trial court on cross-assignment.

(b) Notwithstanding subdivision (a), a trial court may appoint an independent contractor to perform spoken language interpretation of trial court proceedings if one or more of the following circumstances exists:

(1) An interpreter who is not registered or certified is appointed on a temporary basis pursuant to Rule 984.2 of the California Rules of Court.

(2) The interpreter is over 60 years of age on January 1, 2003, or the sum of the interpreter's age in years on January 1, 2003, and the number of years the interpreter has provided services to the trial courts as an independent contractor prior to January 1, 2003, is equal to or greater than 70, the interpreter has provided services to the trial courts as an independent contractor prior to January 1, 2003, and the interpreter requests in writing prior to March 1, 2003, the opportunity to perform services for the trial court as an independent contractor rather than as an employee.

(3) The interpreter is paid directly by the parties to the proceeding.

(4) The interpreter has performed services for the trial courts as an independent contractor prior to January 1, 2003, the interpreter notifies the trial court in writing prior to March 1, 2003, that the interpreter is precluded from accepting employment because of the terms of an employment contract with a public agency or the terms of a public

employee retirement program, the interpreter provides supporting documentation, and the interpreter requests in writing the opportunity to perform services for the trial court as an independent contractor rather than an employee.

(c) Notwithstanding subdivisions (a) and (b), and unless otherwise provided in a memorandum of understanding or agreement with a recognized employee organization, a trial court may also appoint an independent contractor on a day-to-day basis to perform spoken language interpretation of trial court proceedings if all of the following circumstances exist:

(1) The trial court has assigned all the available employees and independent contractors appointed pursuant to paragraphs (2) and (4) of subdivision (b) in the same language pair and has need for additional interpreters. Employees and independent contractors who are appointed pursuant to paragraphs (2) and (4) of subdivision (b) shall be given priority for assignments over independent contractors who are appointed pursuant to this subdivision.

(2) The interpreter has not previously been appointed as an independent contractor by the same trial court on more than 100 court days or parts of court days during the same calendar year, except that the trial court may continue to appoint an independent contractor on a day-to-day basis to complete a single court proceeding, if the trial court determines that the use of the same interpreter to complete that proceeding is necessary to provide continuity. An interpreter who has been appointed by a trial court as an independent contractor pursuant to this subdivision on more than 45 court days or parts of court days during the same calendar year shall be entitled to apply for employment by that trial court as a court interpreter pro tempore and the trial court may not refuse to offer employment to the interpreter, except for cause. For purposes of this section, ''for cause'' means a fair and honest cause or reason regulated by good faith on the part of the party exercising the power.

(3) The trial court does not provide independent contractors appointed pursuant to this subdivision with lesser duties or more favorable working conditions that those to which a court interpreter pro tempore employed by that trial court would be subject for the purpose of discouraging interpreters from applying for pro tempore employment with the trial court. The trial court is not required to apply the employee training, disciplinary, supervisory, and evaluation procedures of the trial court to any independent contractor.

(d) Only registered and certified interpreters may be hired by a trial court as employees to perform spoken language interpretation of trial court proceedings. Interpreters who are not certified or registered may be assigned to provide services as independent contractors only when

certified and registered interpreters are unavailable and the good cause and qualification procedures and guidelines adopted by the Judicial Council pursuant to subdivision (c) of Section 68561 have been followed.

(e) A trial court that has appointed independent contractors pursuant to paragraph (1) of subdivision (b) or to subdivision (c) for a language pair on more than 60 court days or parts of court days in the prior 180 days shall provide public notice that the court is accepting applications for the position of court interpreter pro tempore for that language pair and shall offer employment to qualified applicants.

(f) Unless the parties to the dispute agree upon other procedures after the dispute arises, or other procedures are provided in a memorandum of understanding or agreement with a recognized employee organization, disputes concerning a violation of this section shall be submitted for binding arbitration to the California State Mediation and Conciliation Service.

71803. (a) In each trial court, there shall be a new employee classification entitled ''court interpreter pro tempore'' to perform simultaneous and consecutive interpretation and sight translation in spoken languages for the trial courts. Unless otherwise provided in a memorandum of understanding or agreement with a recognized employee organization, all of the following applies to employees in this classification:

(1) They shall be appointed by the trial court to perform work on an as needed basis.

(2) They shall be paid on a per diem basis for work performed.

(3) They are not required to receive health, pension, or paid leave benefits.

(b) Court interpreters pro tempore may accept appointments to provide services in other trial courts pursuant to Section 71810.

(c) Unless otherwise provided in a memorandum of understanding or agreement with a recognized employee organization, no rules and regulations or personnel rules shall limit the number of hours or days court interpreters pro tempore are permitted to work.

71804. (a) Each trial court shall offer to employ as a court interpreter pro tempore each interpreter who meets all of the following criteria:

(1) The interpreter is certified or registered.

(2) The interpreter has provided services to the same trial court as an independent contractor on at least either:

(A) Thirty court days or parts of court days in both calendar year 2001 and calendar year 2002.

(B) Sixty court days or parts of court days in calendar year 2002.

(3) The interpreter has applied for the position of court interpreter pro tempore prior to July 1, 2003, and has complied with reasonable requirements for submitting an application and providing documentation.

(4) The interpreter's application is not rejected by the trial court for cause.

(b) Each trial court shall begin accepting applications for court interpreters pro tempore by no later than May 1, 2003. Court interpreters who qualify for employment pursuant to this section shall receive offers of employment within 30 days after an application is submitted. Applicants shall have at least 15 days to accept or reject an offer of employment. The hiring process for applicants who accept the offer of employment shall be completed within 30 days after acceptance, but the trial court need not set employment to commence prior to July 1, 2003.

(c) For purposes of this section, ''for cause'' means a fair and honest cause or reason regulated by good faith on the part of the party exercising the power.

(d) Disputes about whether this section has been violated during the regional transition period shall be resolved by binding arbitration. Unless the parties to the dispute agree upon other procedures after the dispute arises, or other procedures are provided in a memorandum of understanding or agreement with a recognized employee organization, the dispute shall be submitted for arbitration to the California State Mediation and Conciliation Service.

71804.5. (a) After a trial court has considered applications under Section 71804, the trial court may hire additional court interpreters pro tempore pursuant to the personnel rules of the trial court.

(b) A court interpreter pro tempore may not be an employee of more than one trial court, but may accept appointments to provide services to more than one trial court through cross-assignments.

71805. (a) Until the conclusion of the regional transition period, all interpreters who are employed by a trial court shall be classified as court interpreters pro tempore, except as provided in Section 71828, unless otherwise provided in a memorandum of understanding or agreement with a recognized employee organization.

(b) This chapter does not require trial courts to alter their past practices regarding the assignment of interpreters. If an interpreter had a regular assignment for the trial court as an independent contractor prior to the effective date of this chapter, nothing in this chapter shall prohibit the trial court from continuing to appoint the same interpreter to the same assignment as a court interpreter pro tempore during the regional transition period.

(c) During the regional transition period, the existing statewide per diem pay rate may not be reduced, and the existing statewide

compensation policies set by the Judicial Council shall be maintained, unless otherwise provided in a memorandum of understanding or agreement with a recognized employee organization. The per diem pay rate and compensation policies shall apply to court interpreters pro tempore.

(d) Court interpreters pro tempore are not subject to disciplinary action during the regional transition period, except for cause.

(e) For purposes of this section, ''for cause'' means a fair and honest cause or reason regulated by good faith on the part of the party exercising the power.

(f) During the regional transition period, a trial court may not retaliate or threaten to retaliate against a court interpreter or applicant for interpreter employment because of the individual's membership in an interpreter association or employee organization, participation in any grievance, complaint, or meet and confer activities, or exercise of rights under this chapter, including by changing past practices regarding assignments, refusing to offer work to an interpreter, altering working conditions, or otherwise coercing, harassing, or discriminating against an applicant or interpreter.

(g) Disputes about whether this section has been violated shall be resolved by binding arbitration. Unless the parties to the dispute agree upon other procedures after the dispute arises, or other procedures are provided in a memorandum of understanding or agreement with a recognized employee organization, the dispute shall be submitted for arbitration to the California State Mediation and Conciliation Service.

71806. (a) At the conclusion of the regional transition period, trial courts in the region may employ certified and registered interpreters to perform spoken language interpretation for the trial courts in full-time or part-time court interpreter positions created by the trial courts with the authorization of the regional committee and subject to meet and confer in good faith. The courts may also continue to employ court interpreters pro tempore.

(b) For purposes of hiring interpreters for positions other than court interpreter pro tempore, unless otherwise provided in a memorandum of understanding or agreement with a recognized employee organization, trial courts shall consider applicants in the following order of priority:

(1) Court interpreters pro tempore in the same language who have performed work for that trial court for at least 150 court days or parts of court days during each of the past five years, including time spent performing work for the trial court as an independent contractor.

(2) Court interpreters pro tempore in the same language who have performed work for that trial court for at least 60 court days or parts of court days in each of the past five years, including time spent performing work for the trial court as an independent contractor.

(3) Court interpreters pro tempore in the same language who have performed work for that trial court for at least 60 court days or parts of court days in at least two of the past four years, including time spent as an independent contractor.

(4) Other applicants.

(c) A trial court may not reject an applicant in favor of an applicant with lower priority except for cause.

(d) For purposes of this section, ''for cause'' means a fair and honest cause or reason regulated by good faith on the part of the party exercising the power.

(e) Applicants may be required to provide sufficient documentation to establish that they are entitled to priority in hiring. Trial courts shall make their records of past assignments available to interpreters for purposes of obtaining that documentation.

(f) Disputes about whether this section has been violated shall be resolved by binding arbitration. Unless the parties to the dispute agree upon other procedures after the dispute arises, or other procedures are provided in a memorandum of understanding or agreement with a recognized employee organization, the dispute shall be submitted for arbitration to the California State Mediation and Conciliation Service.

(g) Subdivision (b) shall become inoperative on January 1, 2007, unless otherwise provided by a memorandum of understanding or agreement with a recognized employee organization, and on and after that time hiring shall be in accordance with the personnel rules of the trial court.

71807. (a) For purposes of developing regional terms and conditions of employment for court interpreters and for collective bargaining with recognized employee organizations, the trial courts are divided into four regions, as follows:

(1) Region 1: Los Angeles, Santa Barbara, and San Luis Obispo Counties.

(2) Region 2: Counties of the First and Sixth Appellate Districts, except Solano County.

(3) Region 3: Counties of the Third and Fifth Appellate Districts.

(4) Region 4: Counties of the Fourth Appellate District.

(b) The Judicial Council shall adopt rules for the creation and operation of a regional court interpreter employment relations committee for each region, composed of representatives chosen by the trial courts within the region.

(c) The Judicial Council may divide each region into smaller subregions for purposes of coordinating the cross-assignment of court interpreters.

71808. The regional court interpreter employment relations committee shall set terms and conditions of employment for court

interpreters within the region, subject to meet and confer in good faith. These terms and conditions of employment, when adopted by the regional committee, shall be binding on the trial courts within the region. Compensation shall be uniform throughout the region. Unless otherwise provided in a memorandum of understanding or agreement with a recognized employee organization, other terms and conditions of employment shall be uniform throughout the region, except that health and welfare and pension benefits may be the same as those provided to other employees of the same trial court.

71809. The regional court interpreter employment relations committee shall act as the representative of the trial courts within the region in bargaining with a recognized employee organization. A memorandum of understanding or agreement ratified by the regional court interpreter employment relations committee shall be considered a binding agreement with each trial court within the region.

71810. (a) A court interpreter pro tempore employed by a trial court may accept appointments to provide services to other trial courts.

(b) The Judicial Council shall adopt procedures to facilitate the efficient cross-assignment of court interpreters.

(c) Based on an assessment of interpreter use and current practices, trial courts may create new employee positions for court interpreters to perform spoken language interpretation for the trial courts in classifications other than court interpreter pro tempore. Some of these positions may include, as part of the duties of the position, the requirement that the interpreter accept cross-assignments, as defined in Section 71801, under procedures adopted by the Judicial Council, and some positions may make the acceptance of cross-assignments optional. Court interpreters pro tempore, and other interpreters who have not accepted employment in a position requiring the interpreter to accept cross-assignments, may not be disciplined for declining a cross-assignment.

(d) The impact of cross-assignments shall be included within the scope of representation as those matters affect wages, hours, and terms and conditions of employment of court interpreters. The regional court interpreter employment relations committee shall be required to meet and confer in good faith with respect to that impact.

(e) A court interpreter on cross-assignment shall be treated for purposes of compensation, employee benefits, seniority, and discipline and grievance procedures, as having performed the services in the trial court in which the interpreter is employed.

(f) Court interpreters on cross-assignment shall be reimbursed for mileage and other travel expenses at the same rates as other judicial branch employees.

71811. Except as provided in this chapter, or by a memorandum of understanding or agreement with a recognized employee organization, court interpreters who are employed by a trial court shall be subject to the same personnel rules as other employees of the trial court, subject to meet and confer in good faith.

71812. Except as provided in this chapter, or by a memorandum of understanding or agreement with a recognized employee organization, each trial court may control the manner and means of the work performed by court interpreters employed by the trial court and may hire, supervise, discipline, and terminate employment of those court interpreters in accordance with the personnel rules of the trial court, including applicable employee protections and dispute resolution mechanisms.

71812.5. (a) Court interpreters employed by the trial courts shall be permitted to engage in outside employment or enterprises, except where that activity would violate the professional conduct requirements set forth in Rule 984.4 of the California Rules of Court, would interfere with the employee's performance of his or her duties for the trial courts, or would be incompatible, inconsistent, or in conflict with the duties performed by the employee for the trial courts.

(b) Unless the parties consent, an interpreter may not be appointed by the trial court to interpret in a proceeding after having previously interpreted on behalf of one of the parties, rather than on behalf of the court, in that same matter. An interpreter shall disclose that type of prior involvement to the trial court.

(c) An interpreter employed by a trial court is prohibited from doing any of the following:

(1) Receiving or accepting, directly or indirectly, a gift, including money, service, gratuity, favor, entertainment, hospitality, loan, or any other thing of value from anyone who is doing or seeking to do business of any kind with the trial court or whose activities are regulated or controlled in any way by the trial court, under circumstances from which it reasonably could be inferred that the gift was intended to influence the employee in the performance of his or her official duties or was intended as a reward for official action of the employee.

(2) Using confidential information acquired by virtue of trial court employment for the employee's private gain or advantage, or for the private gain or advantage of another, or to the employer's detriment.

(3) Using trial court facilities, equipment, or supplies for personal gain or advantage or for the private gain or advantage of another.

(4) Using the prestige or influence of trial court office or employment for personal gain or advantage or advantage of another.

(5) Using the trial court's electronic mail facilities to communicate or promote personal causes or gain.

71813. Except as otherwise provided by statute, court interpreters employed by the trial courts 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. Court interpreters employed by the trial courts also shall have the right to refuse to join or participate in the activities of employee organizations and shall have the right to represent themselves individually in their employment relations with the trial courts.

71814. (a) Notwithstanding any other provision of law, rule, or regulation, an agency shop agreement may be negotiated between a regional court interpreter employment relations committee and a recognized employee organization. As used in this chapter, ''agency shop'' means an arrangement that requires an employee, as a condition of continued employment, either to join the recognized employee organization, or to pay the organization a service fee in an amount not to exceed the standard initiation fee, periodic dues, and general assessments of that organization for the duration of the agreement or for a period of three years from the effective date of the agreement, whichever comes first. However, any employee who is a member of a bona fide religion, body, or sect that has historically held conscientious objections to joining or financially supporting recognized employee organizations may not be required to join or financially support any recognized employee organization as a condition of employment. That employee may be required, in lieu of periodic dues, initiation fees, or agency shop fees to pay sums equal to those dues, initiation fees, or agency shop fees to a nonreligious, nonlabor charitable organization fund exempt from taxation under Section 501(c)(3) of the Internal Revenue Code, chosen by the employee from a list of at least three funds, designated in a memorandum of understanding or agreement between the regional committee and the recognized employee organization, or if the memorandum of understanding or agreement fails to designate any funds, then to any fund chosen by the employee. Proof of those payments shall be made on a monthly basis to the trial court as a condition of continued exemption from the requirement of financial support to the recognized employee organization.

(b) An agency shop provision in a memorandum of understanding or agreement which is in effect may be rescinded by a majority vote of all the employees in the unit covered by the memorandum of understanding or agreement, if all of the following are satisfied:

(1) A request for the vote is supported by a petition containing the signatures of at least 30 percent of the employees in the unit.

(2) The vote is by secret ballot.

(3) The vote is taken at any time during the term of the memorandum of understanding or agreement. No more than one vote may be taken during that term.

(c) In addition to the procedure prescribed in subdivision (a), an agency shop arrangement between the regional court interpreter employment relations committee and a recognized employee organization or recognized employee organizations shall be placed in effect upon (1) a signed petition of at least 30 percent of the employees in the applicable bargaining unit requesting an agency shop agreement and an election to implement an agency fee arrangement, and (2) the approval of a majority of employees who cast ballots and vote in a secret ballot election in favor of the agency shop agreement. An election under this subdivision may not be held more frequently than once a year, and shall be conducted by the Division of Conciliation of the Department of Industrial Relations in the event the regional court interpreter employment relations committee and the recognized employee organization cannot agree within 10 days from the filing of a petition to select jointly a neutral person or entity to conduct the election. The recognized employee organization shall hold the regional court interpreter employment relations committee and the trial courts harmless and defend and indemnify the regional court interpreter employment relations committee and trial courts regarding the application of any agency shop requirements or provisions, including, but not limited to, improper deduction of fees, maintenance of records, and improper reporting.

(d) Notwithstanding subdivisions (a), (b), and (c), the regional court interpreter employment relations committee and the recognized employee organization may negotiate, and by mutual agreement provide for, an alternative procedure or procedures regarding a vote on any agency shop agreement.

(e) An agency shop agreement may not apply to management, confidential, or supervisory employees.

(f) Every recognized employee organization that has agreed to an agency shop provision, or is a party to an agency shop arrangement, shall keep an adequate itemized record of its financial transactions and shall make available annually, to the regional court interpreter employment relations committee with which the agency shop provision was negotiated, and to the employees who are members of the organization, within 60 days after the end of its fiscal year, a detailed written financial report thereof in the form of a balance sheet and an operating statement, certified as to accuracy by its president and treasurer or corresponding principal officer, or by a certified public accountant. An employee organization required to file financial reports under the federal Labor-Management Reporting and Disclosure Act of 1959

(Griffin-Landrum Act), covering employees governed by this chapter or required to file financial reports under Section 3546.5, may satisfy the financial reporting requirement of this section by providing the trial court with a copy of those financial reports.

71815. A recognized employee organization shall have the right to represent its members in their employment relations with the trial courts as to matters covered by this chapter. Employee organizations may establish reasonable restrictions regarding who may join and may make reasonable provisions for the dismissal of individuals from membership. Nothing in this chapter shall prohibit any employee from appearing on his or her own behalf regarding employment relations.

71816. (a) The scope of representation shall include all matters relating to employment conditions and employer-employee relations, including, but not limited to, wages, hours, and other terms and conditions of employment. However, the scope of representation may not include consideration of the merits, necessity, or organization of any service or activity provided by law or executive order.

(b) In view of the unique and special responsibilities of the trial courts in the administration of justice, decisions regarding any of the following matters may not be included within the scope of representation:

(1) The merits and administration of the trial court system.

(2) Coordination, consolidation, and merger of trial courts and support staff.

(3) Automation, including, but not limited to, fax filing, electronic recording, and implementation of information systems.

(4) Design, construction, and location of court facilities.

(5) Delivery of court services.

(6) Hours of operation of the trial courts and trial court system.

(c) The impact from matters in subdivision (b) shall be included within the scope of representation as those matters affect wages, hours, and terms and conditions of employment of court interpreters. The regional court interpreter employment relations committee shall be required to meet and confer in good faith with respect to that impact.

(d) The trial courts have the right to determine assignments and transfers of court interpreters, provided that the process, procedures, and criteria for assignments and transfers are included within the scope of representation.

71817. (a) Except in cases of emergency, as provided in this section, the regional court interpreter employment relations committee shall give reasonable written notice to a recognized employee organization affected by any rule, practice, or policy directly relating to matters within the scope of representation proposed to be adopted by the regional court interpreter employment relations committee, and shall

give that recognized employee organization the opportunity to meet with the committee.

(b) In cases of emergency when the regional court interpreter employment relations committee determines that any rule, policy, or procedure must be adopted immediately without prior notice or meeting with a recognized employee organization, the regional court interpreter employment relations committee shall provide a notice and opportunity to meet at the earliest practicable time following the adoption of the rule, policy, or procedure.

71818. The regional court interpreter employment relations committee, or those representatives as it may designate, shall meet and confer in good faith regarding wages, hours, and other terms and conditions of employment within the scope of representation, as defined in this chapter, with representatives of the recognized employee organizations, and shall consider fully the presentations that are made by the recognized employee organization on behalf of its members prior to arriving at a determination of policy or course of action.

71819. If agreement is reached by the representatives of the regional court interpreter employment relations committee and a recognized employee organization, they shall jointly prepare a written memorandum of understanding or agreement, which is not binding, and present it to the regional court interpreter employment relations committee or its designee for ratification.

71820. If after a reasonable period of time, representatives of the regional court interpreter employment relations committee and the recognized employee organization fail to reach agreement, the regional court interpreter employment relations committee and the recognized employee organization together may agree upon the appointment of a mediator mutually agreeable to the parties. Costs of mediation, if any, shall be divided one-half to the trial courts within the region and one-half to the recognized employee organization.

71821. The trial courts shall allow a reasonable number of court interpreter employee representatives of a recognized employee organization reasonable time off, without loss of compensation or other benefits, when formally meeting and conferring with representatives of the regional court interpreter employment relations committee on matters within the scope of representation.

71822. The trial courts, the regional court interpreter employment relations committee, and employee organizations may not interfere with, intimidate, restrain, coerce, harass, or discriminate against applicants for interpreter employment or interpreter employees because of their membership in an interpreter association or employee organization, because of their participation in any grievance, complaint, or meet and

confer activities, or for the exercise of any other rights granted to interpreter employees under this chapter.

71823. (a) On or before April 1, 2003, the regional court interpreter employment relations committee shall adopt reasonable rules and regulations for the administration of employer-employee relations under this chapter, which shall be binding on the trial courts within the region. These rules shall include provisions for all of the following:

(1) Verification that an organization represents employees of the trial courts within the applicable region.

(2) Verification of the official status of employee organization officers and representatives.

(3) Registration of employee organizations and recognition of these organizations as representatives of interpreters employed by the trial courts in the region.

(4) Establishment of a single, regional bargaining unit of all court interpreters employed by the trial courts in the region, including court interpreters pro tempore.

(5) Recognition of an employee organization as the exclusive representative of all court interpreters employed by the trial courts in the region, subject to the right of a court interpreter to represent himself or herself, as provided in Section 71813, upon either of the following:

(A) Presentation of a petition or cards with the signatures of 50 percent plus one of the court interpreters employed by the trial courts in the region during the payroll period immediately prior to the presentation of the cards or petition, including court interpreters pro tempore, regardless of whether they have been appointed to interpret during that payroll period, if they have worked for the trial courts as independent contractors or employees for at least 15 days in the six months prior to the filing of the petition or cards with those signatures having been obtained within one year prior to presentation of the petition or cards. A signature shall be valid even if the interpreter was not yet an employee at the time the petition or card was signed if the interpreter had previously performed work for the trial courts as an independent contractor, provided that the signature was obtained no more than 90 days before the interpreter became an employee. The results of a request for recognition under this provision shall be certified within 10 days after presentation of the cards or petition.

(B) Receipt by the employee organization of 50 percent plus one of the votes cast at a secret ballot representation election conducted by mail. A representation election shall be held within 30 days after presentation of a 30-percent or greater showing of interest from employees eligible to vote in the representation election by means of a petition or cards supported by signatures obtained within one year prior to the presentation of the petitions or cards. A signature shall be valid even if

the interpreter was not yet an employee at the time the petition or card was signed if the interpreter had previously performed work for the trial courts as an independent contractor, provided that the signature was obtained no more than 90 days before the interpreter became an employee. All certified and registered interpreters employed by the trial courts in the payroll period immediately prior to the election, including court interpreters pro tempore, shall be eligible to vote in the election, regardless of whether they have been appointed to interpret during that payroll period, so long as they have worked for the trial courts as independent contractors or employees for at least 15 days in the six months prior to the filing of the petition or cards. A list of eligible voters shall be provided to the employee organization within 10 days after submission of the petition or cards. Certification of the results of a representation election shall occur within 30 days after the election is concluded.

(6) Procedures for the resolution of disputes involving wages, hours, and other terms and conditions of employment.

(7) Access of employee organization officers and representatives to work locations.

(8) Use of official bulletin boards and other means of communication by employee organizations.

(9) Furnishing nonconfidential information pertaining to employment relations to an employee organization.

(10) Revocation of recognition of an employee organization formally recognized as majority representative pursuant to a vote of the employees by a majority vote of the employees only after a period of not less than 12 months following the date of recognition. A vote shall be requested by a petition or cards signed by at least 30 percent of the employees within the bargaining unit, with those signatures having been obtained within one year prior to presentation of the petition or cards.

(11) Any other matters that are necessary to carry out the purposes of this chapter.

(b) If there is a recognized employee organization in the region, the regional court interpreter employment relations committee may amend the reasonable rules and regulations adopted pursuant to subdivision (a) by adopting reasonable rules and regulations, after meeting and conferring in good faith, for the administration of employer-employee relations under this chapter, which shall be binding on the trial courts within the region.

71824. A court interpreter may authorize a dues deduction from his or her salary or wages in the same manner provided to public agency employees pursuant to Section 1157.1, 1157.2, 1157.3, 1157.4, 1157.5, or 1157.7.

71825. (a) Each regional court interpreter employment relations committee shall adopt a procedure to be used as a preliminary step before petitioning the superior court for relief pursuant to subdivision (b) or (c). 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) 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 chapter 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.

(c) Notwithstanding Sections 1085 and 1103 of the Code of Civil Procedure requiring the issuance of a writ to an inferior tribunal, if a regional court interpreter employment relations committee, a trial court, a court interpreter employed by a trial court, or an employee organization believes there has been a violation of this chapter, that party may petition the superior court for relief.

(d) The hearing and appeal process shall be governed by the rules of court adopted by the Judicial Council pursuant to Section 71639.1.

(e) A complete alternative to the procedure outlined in subdivisions (b), (c), and (d) may be provided for by mutual agreement between a regional court interpreter employment relations committee and representatives of a recognized employee organization.

(f) A court decision interpreting or applying this chapter is not binding in cases or proceedings arising under Chapter 10 (commencing with Section 3500) of Division 4 of Title 1.

71826. (a) The enactment of this chapter may not be construed as making Section 923 of the Labor Code applicable to court interpreters.

(b) Court interpreters and the trial courts are not covered by Chapter 10 (commencing with Section 3500) of Division 4 of Title 1, or any subsequent changes thereto except as provided in this chapter. However, if the language of this chapter is the same or substantially the same as that contained in Chapter 10 (commencing with Section 3500) of Division 4 of Title 1, it shall be interpreted and applied in accordance with the judicial interpretations of the same language.

71827. If any provision of this chapter, or the application thereof, to any person or circumstances, is held invalid, the invalidity may not affect

other provisions or application of the chapter that can be given effect without the invalid provisions or application and, to this end the provisions of this chapter are severable.

71828. (a) This chapter does not apply to trial courts in Solano and Ventura Counties. Labor and employment relations for court interpreters employed by trial courts in Solano and Ventura Counties shall remain subject to the Trial Court Employment Protection and Governance Act, Chapter 7 (commencing with Section 71600), and nothing in this chapter shall be construed to affect the application of the Trial Court Employment Protection and Governance Act, Chapter 7 (commencing with Section 71600), to court interpreters employed by those counties.

(b) If an interpreter employed by a trial court in a different county accepts a temporary appointment to perform services for a trial court in the Solano or Ventura County, the interpreter shall be treated for purposes of compensation, employee benefits, seniority, and discipline and grievance procedures, as having performed the services in the trial court in which the interpreter is employed.

(c) If an interpreter employed by a trial court in Solano or Ventura County accepts a temporary appointment to perform services for another trial court, the interpreter shall be treated for purposes of compensation, employee benefits, seniority, and discipline and grievance procedures, as having performed the services in the trial court in which the interpreter is employed.

(d) This chapter also does not apply to court interpreters who have been continuously employed by a trial court in any county beginning prior to September 1, 2002, and who are covered by a memorandum of understanding or agreement entered into pursuant to the Trial Court Employment Protection and Governance Act, Chapter 7 (commencing with Section 71600) and to future employees hired in the same positions as replacements for those employees. Trial courts may not reduce the wages and benefits of other interpreters hired as employees prior to December 31, 2002, during the regional transition period or during the term of an existing contract, whichever is longer.

71829. The trial courts shall provide to the Judicial Council on or before March 1, 2003, a list of certified and registered court interpreters appointed by the trial courts as independent contractors between January 1, 2002, and January 1, 2003, including the number of court days or parts of court days those interpreters have been appointed by each trial court during that year and each of the prior four years. The Judicial Council shall provide this list to registered employee organizations.

SEC. 3. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing

with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

CHAPTER 1048

An act to amend Section 1720 of the Labor Code, relating to public works.

[Approved by Governor September 28, 2002. Filed with Secretary of State September 28, 2002.]

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

SECTION 1. Section 1720 of the Labor Code is amended to read:

1720. (a) As used in this chapter, ''public works'' means:

(1) Construction, alteration, demolition, installation, or repair work done under contract and paid for in whole or in part out of public funds, except work done directly by any public utility company pursuant to order of the Public Utilities Commission or other public authority. For purposes of this paragraph, ''construction'' includes work performed during the design and preconstruction phases of construction including, but not limited to, inspection and land surveying work.

(2) Work done for irrigation, utility, reclamation, and improvement districts, and other districts of this type. ''Public work'' does not include the operation of the irrigation or drainage system of any irrigation or reclamation district, except as used in Section 1778 relating to retaining wages.

(3) Street, sewer, or other improvement work done under the direction and supervision or by the authority of any officer or public body of the state, or of any political subdivision or district thereof, whether the political subdivision or district operates under a freeholder's charter or not.

(4) The laying of carpet done under a building lease-maintenance contract and paid for out of public funds.

(5) The laying of carpet in a public building done under contract and paid for in whole or in part out of public funds.

(6) Public transportation demonstration projects authorized pursuant to Section 143 of the Streets and Highways Code.

(b) For purposes of this section, ''paid for in whole or in part out of public funds'' means all of the following:

(1) The payment of money or the equivalent of money by the state or political subdivision directly to or on behalf of the public works contractor, subcontractor, or developer.

(2) Performance of construction work by the state or political subdivision in execution of the project.

(3) Transfer by the state or political subdivision of an asset of value for less than fair market price.

(4) Fees, costs, rents, insurance or bond premiums, loans, interest rates, or other obligations that would normally be required in the execution of the contract, that are paid, reduced, charged at less than fair market value, waived, or forgiven by the state or political subdivision.

(5) Money loaned by the state or political subdivision that is to be repaid on a contingent basis.

(6) Credits that are applied by the state or political subdivision against repayment obligations to the state or political subdivision.

(c) Notwithstanding subdivision (b):

(1) Private residential projects built on private property are not subject to the requirements of this chapter unless the projects are built pursuant to an agreement with a state agency, redevelopment agency, or local public housing authority.

(2) If the state or a political subdivision requires a private developer to perform construction, alteration, demolition, installation, or repair work on a public work of improvement as a condition of regulatory approval of an otherwise private development project, and the state or political subdivision contributes no more money, or the equivalent of money, to the overall project than is required to perform this public improvement work, and the state or political subdivision maintains no proprietary interest in the overall project, then only the public improvement work shall thereby become subject to this chapter.

(3) If the state or a political subdivision reimburses a private developer for costs that would normally be borne by the public, or provides directly or indirectly a public subsidy to a private development project that is de minimis in the context of the project, an otherwise private development project shall not thereby become subject to the requirements of this chapter.

(4) The construction or rehabilitation of affordable housing units for low- or moderate-income persons pursuant to paragraph (5) or (7) of subdivision (e) of Section 33334.2 of the Health and Safety Code that are paid for solely with moneys from a Low and Moderate Income Housing Fund established pursuant to Section 33334.3 of the Health and Safety Code or that are paid for by a combination of private funds and funds available pursuant to Section 33334.2 or 33334.3 of the Health and Safety Code do not constitute a project that is paid for in whole or in part out of public funds.

(5) ''Paid for in whole or in part out of public funds'' does not include tax credits provided pursuant to Section 17053.49 or 23649 of the Revenue and Taxation Code.

(6) Unless otherwise required by a public funding program, the construction or rehabilitation of privately owned residential projects is not subject to the requirements of this chapter if one or more of the following conditions are met:

(A) The project is a self-help housing project in which no fewer than 500 hours of construction work associated with the homes are to be performed by the homebuyers.

(B) The project consists of rehabilitation or expansion work associated with a facility operated on a not-for-profit basis as temporary or transitional housing for homeless persons with a total project cost of less than twenty-five thousand dollars ($25,000).

(C) Assistance is provided to a household as either mortgage assistance, downpayment assistance, or for the rehabilitation of a single-family home.

(D) The project consists of new construction, or expansion, or rehabilitation work associated with a facility developed by a nonprofit organization to be operated on a not-for-profit basis to provide emergency or transitional shelter and ancillary services and assistance to homeless adults and children. The nonprofit organization operating the project shall provide, at no profit, not less than 50 percent of the total project cost from nonpublic sources, excluding real property that is transferred or leased. Total project cost includes the value of donated labor, materials, architectural, and engineering services.

(E) The public participation in the project that would otherwise meet the criteria of subdivision (b) is public funding in the form of below-market interest rate loans for a project in which occupancy of at least 40 percent of the units is restricted for at least 20 years, by deed or regulatory agreement, to individuals or families earning no more than 80 percent of the area median income.

(d) Notwithstanding any provision of this section to the contrary, the following projects shall not, solely by reason of this section, be subject to the requirements of this chapter:

(1) Qualified residential rental projects, as defined by Section 142 (d) of the Internal Revenue Code, financed in whole or in part through the issuance of bonds that receive allocation of a portion of the state ceiling pursuant to Chapter 11.8 of Division 1 (commencing with Section 8869.80) of the Government Code on or before December 31, 2003.

(2) Single-family residential projects financed in whole or in part through the issuance of qualified mortgage revenue bonds or qualified veterans' mortgage bonds, as defined by Section 143 of the Internal Revenue Code, or with mortgage credit certificates under a Qualified

Mortgage Credit Certificate Program, as defined by Section 25 of the Internal Revenue Code, that receive allocation of a portion of the state ceiling pursuant to Chapter 11.8 of Division 1 (commencing with Section 8869.80) of the Government Code on or before December 31, 2003.

(3) Low-income housing projects that are allocated federal or state low-income housing tax credits pursuant to Section 42 of the Internal Revenue Code, Chapter 3.6 of Division 31 (commencing with Section 50199.4) of the Health and Safety Code, or Section 12206, 17058, or 23610.5 of the Revenue and Taxation Code, on or before December 31, 2003.

(e) If a statute, other than this section, or a regulation, other than a regulation adopted pursuant to this section, or an ordinance or a contract applies this chapter to a project, the exclusions set forth in subdivision (d) do not apply to that project.

(f) For purposes of this section, references to the Internal Revenue Code mean the Internal Revenue Code of 1986, as amended, and include the corresponding predecessor sections of the Internal Revenue Code of 1954, as amended.

(g) The amendments made to this section by either Chapter 938 of the Statutes of 2001 or the act adding this subdivision shall not be construed to preempt local ordinances requiring the payment of prevailing wages on housing projects.

CHAPTER 1049

An act to add Section 22200.5 to, and to repeal and add Section 22200 of, the Education Code, relating to the State Teachers' Retirement System.

[Approved by Governor September 28, 2002. Filed with Secretary of State September 28, 2002.]

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

SECTION 1. Section 22200 of the Education Code is repealed.

SEC. 2. Section 22200 is added to the Education Code, to read:

22200. (a) The plan and the system are administered by the Teachers' Retirement Board. The members of the board are as follows:

(1) The Superintendent of Public Instruction.

(2) The Controller.

(3) The Treasurer.

(4) The Director of Finance.

(5) Three persons who are either members of the Defined Benefit Program or participants in the Cash Balance Benefit Program, as follows:

(A) One person who, at the time of election, is an active member of the Defined Benefit Program or an active participant of the Cash Balance Benefit Program employed by a school district that provides instruction for grades K to 12, inclusive, or a county office of education, in a position other than a school administrator that requires a services credential with a specialization in administrative services. This member shall be elected by the active members of the Defined Benefit Program and active participants of the Cash Balance Benefit Program who are employed by a school district that provides instruction for grades K to 12, inclusive, or county office of education, pursuant to regulations adopted by the board, for a four-year term commencing on January 1, 2004.

(B) One person who, at the time of election, is an active member of the Defined Benefit Program or an active participant of the Cash Balance Benefit Program employed by a school district that provides instruction for grades K to 12, inclusive, or a county office or education. This member shall be elected by the active members of the Defined Benefit Program who are employed by a school district that provides instruction for grades K to 12, inclusive, or a county office of education, pursuant to regulations adopted by the board, for a four-year term commencing on January 1, 2004.

(C) One person who, at the time of election, is a community college instructor and an active member of the Defined Benefit Program or an active participant of the Cash Balance Benefit Program employed by a community college district, who shall be elected by the active community college members of the Defined Benefit Program and the active community college participants of the Cash Balance Benefit Program, pursuant to regulations adopted by the board, for a four-year term commencing on January 1, 2004.

(6) Five persons appointed by the Governor for a term of four years, subject to confirmation by the Senate, as follows:

(A) One person who, at the time of appointment, is a member of the governing board of a school district or a community college district.

(B) One person who is either a retired member under this part or a retired participant under Part 14 (commencing with Section 26000).

(C) Three persons representing the public, whose terms shall be staggered by varying the first terms of these members.

(b) The members of the board shall annually elect a chairperson and vice chairperson.

SEC. 3. Section 22200.5 is added to the Education Code, to read:

22200.5. (a) The board shall conduct the elections of members described in Section 22200 pursuant to regulations adopted by the board.

(b) The board shall hold special elections to fill vacancies that occur during the term of the elected members of the board. If, at the time a vacancy occurs, the unexpired term is less than two years, the new member elected to fill the vacancy shall hold office for a period equal to the remainder of the term of the vacated office plus four years.

(c) The regulations adopted by the board pursuant to this section and Section 22200 shall not be subject to Article 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(d) The regulations adopted by the board shall provide that the elections be conducted in the most cost-effective manner deemed feasible. The board, where practicable, shall consolidate election mailings with other mailings and shall address any other feasible cost-saving measures.

SEC. 4. Sections 1 and 2 of this act shall become operative on January 1, 2004.

CHAPTER 1050

An act to add Section 1797.115 to the Health and Safety Code, relating to emergency services.

[Approved by Governor September 28, 2002. Filed with Secretary of State September 28, 2002.]

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

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

(a) In California it costs approximately $40,000 to cross-train a firefighter as a paramedic. This cost reflects expenses incurred for, among other things, instructional supplies, teaching staff, equipment, and trainee compensation.

(b) It is cost-effective for state and local agencies to integrate their paramedic training course needs into single multiagency courses.

(c) The California Fire Fighter Joint Apprenticeship Program, a quasi-governmental agency jointly sponsored by the California State Fire Marshal and the California Professional Firefighters, is a voluntary fire service apprenticeship training program whose broad network represents employers of approximately 90 percent of professional firefighters statewide.

(d) The California Fire Fighter Joint Apprenticeship Program is an equal balance partnership benefitting California fire departments, firefighters, and the communities served by the program.

SEC. 2. Section 1797.115 is added to the Health and Safety Code, to read:

1797.115. (a) To the extent permitted by federal law and upon appropriation in the annual Budget Act or another statute, the Director of Finance may transfer any moneys in the Federal Trust Fund established pursuant to Section 16360 of the Government Code to the Emergency Medical Services Authority if the money is made available by the United States for expenditure by the state for purposes consistent with the implementation of this section.

(b) Moneys appropriated pursuant to subdivision (a) shall be allocated by the authority to the California Fire Fighter Joint Apprenticeship Program to do all of the following:

(1) Offset the cost of paramedic training course development.

(2) Enter into reimbursement contracts with eligible state and local agencies that in turn may contract with educational institutions for the delivery of paramedic training conducted in compliance with the requirements of subdivision (a) of Section 1797.172.

(3) Allocate funds, in the form of grants, to eligible state and local agencies to defray the cost of providing paramedic training for fire services personnel, including, but not limited to, instructional supplies and trainee compensation expenses. To the extent permitted by federal law, the authority shall recover its costs for administration of this section from the funds transferred pursuant to subdivision (a).

(c) In order to be eligible for a grant under paragraph (3) of subdivision (b), a state or local agency shall demonstrate a need for additional paramedics.

(d) For purposes of this section, the following definitions shall apply:

(1) ''Fire service personnel'' includes, but is not limited to, a firefighter or prehospital emergency medical worker employed by a state or local agency.

(2) ''Local agency'' means any city, county, city and county, fire district, special district, joint powers agency, or any other political subdivision of the state that provides fire protection services.

(3) ''State agency'' means any state agency that provides residential or institutional fire protection, including, but not limited to, the Department of Forestry and Fire Protection.

CHAPTER 1051

An act to amend Section 19201 of, and to add Section 19205 to, the Health and Safety Code, relating to public safety.

[Approved by Governor September 28, 2002. Filed with
Secretary of State September 28, 2002.]

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

SECTION 1. Section 19201 of the Health and Safety Code is amended to read:

19201. As used in this article:

(a) ''Seismic gas shutoff device'' means a seismic gas shutoff device installed on customer-owned gas piping certified by the State Architect pursuant to Section 19202. Notwithstanding any other provision of law, ''seismic gas shutoff device'' does not include any device installed on a gas distribution system owned or operated by a public utility.

(b) ''Excess flow gas shutoff device'' means a gas shutoff device installed on customer-owned gas piping described in paragraph (2) of subdivision (a) of Section 19202 that has been certified by the State Architect pursuant to that section. Notwithstanding any other provision of law, ''excess flow gas shutoff device'' shall not include any device installed on a gas distribution system owned or operated by a public utility.

(c) ''Customer-owned gas piping'' means all parts of the gas piping system downstream of the gas utility point of delivery, including, but not limited to, downstream of the gas utility meter and service tee (also known as a bypass tee).

SEC. 2. Section 19205 is added to the Health and Safety Code, to read:

19205. In the next annual code adoption cycle that begins after January 1, 2003, the Department of Housing and Community Development, in consultation with the Office of the State Architect and the State Fire Marshal, shall consider whether or not to propose for adoption and approval by the Building Standards Commission the requirement that seismic gas shutoff devices or excess flow gas shutoff devices be installed in all or a portion of dwelling units, hotels, motels, and lodginghouses. If the department makes such a proposal to the commission, the commission shall take action in that annual code adoption cycle to adopt and approve or to not adopt and approve the proposal. If the department decides to not make such a proposal, the department shall explain in writing the reasons for its decision. It is the intent of the Legislature in enacting this section that the department include in any proposal to the commission an analysis of the cost and safety benefits of the proposal.

CHAPTER 1052

An act to amend Sections 21082.1, 21083, and 21091 of the Public Resources Code, relating to environmental quality.

[Approved by Governor September 28, 2002. Filed with Secretary of State September 28, 2002.]

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

SECTION 1. Section 21082.1 of the Public Resources Code is amended to read:

21082.1. (a) Any draft environmental impact report, environmental impact report, negative declaration, or mitigated negative declaration prepared pursuant to the requirements of this division shall be prepared directly by, or under contract to, a public agency.

(b) This section is not intended to prohibit, and shall not be construed as prohibiting, any person from submitting information or other comments to the public agency responsible for preparing an environmental impact report, draft environmental impact report, negative declaration, or mitigated negative declaration. The information or other comments may be submitted in any format, shall be considered by the public agency, and may be included, in whole or in part, in any report or declaration.

(c) The lead agency shall do all of the following:

(1) Independently review and analyze any report or declaration required by this division.

(2) Circulate draft documents that reflect its independent judgment.

(3) As part of the adoption of a negative declaration or a mitigated negative declaration, or certification of an environmental impact report, find that the report or declaration reflects the independent judgment of the lead agency.

(4) Submit a sufficient number of copies of the draft environmental impact report, proposed negative declaration, or proposed mitigated negative declaration, and a copy of the report or declaration in an electronic form as required by the guidelines adopted pursuant to Section 21083, to the State Clearinghouse for review and comment by state agencies, if any of the following apply:

(A) A state agency is any of the following:

(i) The lead agency.

(ii) A responsible agency.

(iii) A trustee agency.

(B) A state agency otherwise has jurisdiction by law with respect to the project.

(C) The proposed project is of sufficient statewide, regional, or areawide environmental significance as determined pursuant to the guidelines certified and adopted pursuant to Section 21083.

SEC. 2. Section 21083 of the Public Resources Code is amended to read:

21083. (a) The Office of Planning and Research shall prepare and develop proposed guidelines for the implementation of this division by public agencies. The guidelines shall include objectives and criteria for the orderly evaluation of projects and the preparation of environmental impact reports and negative declarations in a manner consistent with this division.

(b) The guidelines shall specifically include criteria for public agencies to follow in determining whether or not a proposed project may have a ''significant effect on the environment.'' The criteria shall require a finding that a project may have a ''significant effect on the environment'' if any of the following conditions exist:

(1) A proposed project has the potential to degrade the quality of the environment, curtail the range of the environment, or to achieve short-term, to the disadvantage of long-term, environmental goals.

(2) The possible effects of a project are individually limited but cumulatively considerable. As used in this paragraph, ''cumulatively considerable'' means that the incremental effects of an individual project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects.

(3) The environmental effects of a project will cause substantial adverse effects on human beings, either directly or indirectly.

(c) The guidelines shall include procedures for determining the lead agency pursuant to Section 21165.

(d) The guidelines shall include criteria for public agencies to use in determining when a proposed project is of sufficient statewide, regional, or areawide environmental significance that a draft environmental impact report, a proposed negative declaration, or a proposed mitigated negative declaration shall be submitted to appropriate state agencies, through the State Clearinghouse, for review and comment prior to completion of the environmental impact report, negative declaration, or mitigated negative declaration.

(e) The Office of Planning and Research shall develop and prepare the proposed guidelines as soon as possible and shall transmit them immediately to the Secretary of the Resources Agency. The Secretary of the Resources Agency shall certify and adopt the guidelines pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, which shall become effective upon the filing thereof. However, the guidelines shall not be adopted without

compliance with Sections 11346.4, 11346.5, and 11346.8 of the Government Code.

SEC. 3. Section 21091 of the Public Resources Code is amended to read:

21091. (a) The public review period for a draft environmental impact report shall not be less than 30 days. If the draft environmental impact report is submitted to the State Clearinghouse for review, the review period shall be at least 45 days, and the lead agency shall provide a sufficient number of copies of the document to the State Clearinghouse for review and comment by state agencies.

(b) The public review period for a proposed negative declaration or proposed mitigated negative declaration shall not be less than 20 days. If the proposed negative declaration or proposed mitigated negative declaration is submitted to the State Clearinghouse for review, the review period shall be at least 30 days, and the lead agency shall provide a sufficient number of copies of the document to the State Clearinghouse for review and comment by state agencies.

(c) Notwithstanding subdivisions (a) and (b), if a draft environmental impact report, proposed negative declaration, or proposed mitigated negative declaration is submitted to the State Clearinghouse for review and the period of review by the State Clearinghouse is longer than the public review period established pursuant to subdivision (a) or (b), whichever is applicable, the public review period shall be at least as long as the period of review by the State Clearinghouse.

(d) (1) The lead agency shall consider any comments it receives on a draft environmental impact report, proposed negative declaration, or proposed mitigated negative declaration if those comments are received within the public review period.

(2) (A) With respect to the consideration of comments received on a draft environmental impact report, the lead agency shall evaluate any comments on environmental issues that are received from persons who have reviewed the draft and shall prepare a written response pursuant to subparagraph (B). The lead agency may also respond to comments that are received after the close of the public review period.

(B) The written response shall describe the disposition of any significant environmental issue that is raised by commenters. The responses shall be prepared consistent with Section 15088 of Title 14 of the California Code of Regulations, as those regulations existed on June 1, 1993.

(e) (1) Criteria for shorter review periods by the State Clearinghouse for documents that must be submitted to the State Clearinghouse shall be set forth in the written guidelines issued by the Office of Planning and Research and made available to the public.

(2) Those shortened review periods shall not be less than 30 days for a draft environmental impact report and 20 days for a negative declaration.

(3) Any request for a shortened review period shall only be made in writing by the decisionmaking body of the lead agency to the Office of Planning and Research. The decisionmaking body may designate by resolution or ordinance a person authorized to request a shortened review period. Any designated person shall notify the decisionmaking body of this request.

(4) Any request approved by the State Clearinghouse shall be consistent with the criteria set forth in the written guidelines of the Office of Planning and Research.

(5) A shortened review period shall not be approved by the Office of Planning and Research for any proposed project of statewide, regional, or areawide environmental significance as determined pursuant to Section 21083.

(6) Any approval of a shortened review period shall be given prior to, and reflected in, the public notice required pursuant to Section 21092.

(f) Prior to carrying out or approving a project for which a negative declaration has been adopted, the lead agency shall consider the negative declaration together with any comments that were received and considered pursuant to paragraph (1) of subdivision (d).

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act, within the meaning of Section 17556 of the Government Code.

CHAPTER 1053

An act to amend Section 51033 of the Government Code, relating to land use.

[Approved by Governor September 29, 2002. Filed with Secretary of State September 29, 2002.]

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

SECTION 1. Section 51033 of the Government Code is amended to read:

51033. (a) This chapter does not apply to cosmetologists, barbers, or to persons licensed to practice any healing art pursuant to Division 2

(commencing with Section 500) of the Business and Professions Code or the Chiropractic Act when engaging in this practice within the scope of his or her license.

(b) Notwithstanding any other provision of law, this chapter shall apply to an independent contractor of any person described in subdivision (a) if the independent contractor is engaged in, or is purported to be engaged in, the business of massage.

CHAPTER 1054

An act to amend, renumber, and add Section 1798.82 of, and to add Section 1798.29 to, the Civil Code, relating to personal information.

[Approved by Governor September 29, 2002. Filed with Secretary of State September 29, 2002.]

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

SECTION 1. (a) The privacy and financial security of individuals is increasingly at risk due to the ever more widespread collection of personal information by both the private and public sector.

(b) Credit card transactions, magazine subscriptions, telephone numbers, real estate records, automobile registrations, consumer surveys, warranty registrations, credit reports, and Internet Web sites are all sources of personal information and form the source material for identity thieves.

(c) Identity theft is one of the fastest growing crimes committed in California. Criminals who steal personal information such as social security numbers use the information to open credit card accounts, write bad checks, buy cars, and commit other financial crimes with other people's identities. The Los Angeles County Sheriff's Department reports that the 1,932 identity theft cases it received in the year 2000 represented a 108 percent increase over the previous year's caseload.

(d) Identity theft is costly to the marketplace and to consumers.

(e) According to the Attorney General, victims of identity theft must act quickly to minimize the damage; therefore expeditious notification of possible misuse of a person's personal information is imperative.

SEC. 2. Section 1798.29 is added to the Civil Code, to read:

1798.29. (a) Any agency that owns or licenses computerized data that includes personal information shall disclose any breach of the security of the system following discovery or notification of the breach in the security of the data to any resident of California whose unencrypted personal information was, or is reasonably believed to have

been, acquired by an unauthorized person. The disclosure shall be made in the most expedient time possible and without unreasonable delay, consistent with the legitimate needs of law enforcement, as provided in subdivision (c), or any measures necessary to determine the scope of the breach and restore the reasonable integrity of the data system.

(b) Any agency that maintains computerized data that includes personal information that the agency does not own shall notify the owner or licensee of the information of any breach of the security of the data immediately following discovery, if the personal information was, or is reasonably believed to have been, acquired by an unauthorized person.

(c) The notification required by this section may be delayed if a law enforcement agency determines that the notification will impede a criminal investigation. The notification required by this section shall be made after the law enforcement agency determines that it will not compromise the investigation.

(d) For purposes of this section, ''breach of the security of the system'' means unauthorized acquisition of computerized data that compromises the security, confidentiality, or integrity of personal information maintained by the agency. Good faith acquisition of personal information by an employee or agent of the agency for the purposes of the agency is not a breach of the security of the system, provided that the personal information is not used or subject to further unauthorized disclosure.

(e) For purposes of this section, ''personal information'' means an individual's first name or first initial and last name in combination with any one or more of the following data elements, when either the name or the data elements are not encrypted:

(1) Social security number.

(2) Driver's license number or California Identification Card number.

(3) Account number, credit or debit card number, in combination with any required security code, access code, or password that would permit access to an individual's financial account.

(f) For purposes of this section, ''personal information'' does not include publicly available information that is lawfully made available to the general public from federal, state, or local government records.

(g) For purposes of this section, ''notice'' may be provided by one of the following methods:

(1) Written notice.

(2) Electronic notice, if the notice provided is consistent with the provisions regarding electronic records and signatures set forth in Section 7001 of Title 15 of the United States Code.

(3) Substitute notice, if the agency demonstrates that the cost of providing notice would exceed two hundred fifty thousand dollars ($250,000), or that the affected class of subject persons to be notified

exceeds 500,000, or the agency does not have sufficient contact information. Substitute notice shall consist of all of the following:

(A) E-mail notice when the agency has an e-mail address for the subject persons.

(B) Conspicuous posting of the notice on the agency's Web site page, if the agency maintains one.

(C) Notification to major statewide media.

(h) Notwithstanding subdivision (g), an agency that maintains its own notification procedures as part of an information security policy for the treatment of personal information and is otherwise consistent with the timing requirements of this part shall be deemed to be in compliance with the notification requirements of this section if it notifies subject persons in accordance with its policies in the event of a breach of security of the system.

SEC. 3. Section 1798.82 of the Civil Code is amended and renumbered to read:

1798.84. (a) Any customer injured by a violation of this title may institute a civil action to recover damages.

(b) Any business that violates, proposes to violate, or has violated this title may be enjoined.

(c) The rights and remedies available under this section are cumulative to each other and to any other rights and remedies available under law.

SEC. 4. Section 1798.82 is added to the Civil Code, to read:

1798.82. (a) Any person or business that conducts business in California, and that owns or licenses computerized data that includes personal information, shall disclose any breach of the security of the system following discovery or notification of the breach in the security of the data to any resident of California whose unencrypted personal information was, or is reasonably believed to have been, acquired by an unauthorized person. The disclosure shall be made in the most expedient time possible and without unreasonable delay, consistent with the legitimate needs of law enforcement, as provided in subdivision (c), or any measures necessary to determine the scope of the breach and restore the reasonable integrity of the data system.

(b) Any person or business that maintains computerized data that includes personal information that the person or business does not own shall notify the owner or licensee of the information of any breach of the security of the data immediately following discovery, if the personal information was, or is reasonably believed to have been, acquired by an unauthorized person.

(c) The notification required by this section may be delayed if a law enforcement agency determines that the notification will impede a criminal investigation. The notification required by this section shall be

made after the law enforcement agency determines that it will not compromise the investigation.

(d) For purposes of this section, ''breach of the security of the system'' means unauthorized acquisition of computerized data that compromises the security, confidentiality, or integrity of personal information maintained by the person or business. Good faith acquisition of personal information by an employee or agent of the person or business for the purposes of the person or business is not a breach of the security of the system, provided that the personal information is not used or subject to further unauthorized disclosure.

(e) For purposes of this section, ''personal information'' means an individual's first name or first initial and last name in combination with any one or more of the following data elements, when either the name or the data elements are not encrypted:

(1) Social security number.

(2) Driver's license number or California Identification Card number.

(3) Account number, credit or debit card number, in combination with any required security code, access code, or password that would permit access to an individual's financial account.

(f) For purposes of this section, ''personal information'' does not include publicly available information that is lawfully made available to the general public from federal, state, or local government records.

(g) For purposes of this section, ''notice'' may be provided by one of the following methods:

(1) Written notice.

(2) Electronic notice, if the notice provided is consistent with the provisions regarding electronic records and signatures set forth in Section 7001 of Title 15 of the United States Code.

(3) Substitute notice, if the person or business demonstrates that the cost of providing notice would exceed two hundred fifty thousand dollars ($250,000), or that the affected class of subject persons to be notified exceeds 500,000, or the person or business does not have sufficient contact information. Substitute notice shall consist of all of the following:

(A) E-mail notice when the person or business has an e-mail address for the subject persons.

(B) Conspicuous posting of the notice on the Web site page of the person or business, if the person or business maintains one.

(C) Notification to major statewide media.

(h) Notwithstanding subdivision (g), a person or business that maintains its own notification procedures as part of an information security policy for the treatment of personal information and is otherwise consistent with the timing requirements of this part, shall be deemed to be in compliance with the notification requirements of this section if the

person or business notifies subject persons in accordance with its policies in the event of a breach of security of the system.

SEC. 5. This act shall become operative on July 1, 2003.

SEC. 6. This act deals with a subject matter that is of statewide concern, and it is the intent of the Legislature that this act supersede and preempt all rules, regulations, codes, statutes, or ordinances or all cities, counties, cities and counties, municipalities, and other local agencies regarding the matters expressly set forth in this act.

CHAPTER 1055

An act to amend Section 69995 of the Education Code, relating to postsecondary education.

[Approved by Governor September 29, 2002. Filed with Secretary of State September 29, 2002.]

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

SECTION 1. 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) The pupil has taken the achievement test authorized by Section 60640 in grade 9, 10, or 11.

(2) The pupil has been enrolled at a California public school for at least 12 consecutive months immediately preceding, or has been in attendance for at least 110 days of the school year in which the test is administered and at least 110 days of the school year 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) The pupil has taken 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 Section 60643, 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 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 to and revisions of the data that are 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.

CHAPTER 1056

An act relating to the Kerman Unified School District.

[Approved by Governor September 29, 2002. Filed with Secretary of State September 29, 2002.]

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

SECTION 1. Notwithstanding subdivision (d) of Section 1 of Chapter 789 of the Statutes of 1997, the Kerman Unified School District shall have at least four years but no more than 11 years to complete payment, required by Section 1 of Chapter 789 of the Statutes of 1997,

on the fiscal assessment for audit exceptions with respect to independent study apportionments made to the school district.

SEC. 2. The Legislature finds and declares that due to special circumstances surrounding the Kerman Unified School District that a general statute cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitution, and the enactment of a special statute is therefore necessary. The facts concerning the Kerman Unified School District's special circumstances are that it risks falling below the required 3 percent budget reserve if it is not given an extension regarding payment of the fiscal assessment required pursuant to Section 1 of Chapter 789 of the Statutes of 1997.

CHAPTER 1057

An act to amend Sections 11571, 11573, 11573.5, and 11581 of the Health and Safety Code, and to amend Sections 11226, 11227, and 11230 of the Penal Code, relating to nuisance.

[Approved by Governor September 29, 2002. Filed with Secretary of State September 29, 2002.]

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

SECTION 1. Section 11571 of the Health and Safety Code is amended to read:

11571. Whenever there is reason to believe that a nuisance as described in Section 11570 is kept, maintained, or exists in any county, the district attorney of the county, or the city attorney of any incorporated city or of any city and county, in the name of the people, may, or any citizen of the state resident in the county, in his or her own name, may maintain an action to abate and prevent the nuisance and perpetually to enjoin the person conducting or maintaining it, and the owner, lessee, or agent of the building or place, in or upon which the nuisance exists, from directly or indirectly maintaining or permitting the nuisance.

SEC. 2. Section 11573 of the Health and Safety Code is amended to read:

11573. (a) If the existence of the nuisance is shown in the action to the satisfaction of the court or judge, either by verified complaint or affidavit, the court or judge shall allow a temporary restraining order or injunction to abate and prevent the continuance or recurrence of the nuisance.

(b) A temporary restraining order or injunction may enjoin subsequent owners, commercial lessees, or agents who acquire the

building or place where the nuisance exists with notice of the temporary restraining order or injunction, specifying that the owner of the property subject to the temporary restraining order or injunction shall notify any prospective purchaser, commercial lessee, or other successor in interest of the existence of the order or injunction, and of its application to successors in interest, prior to entering into any agreement to sell or lease the property. The temporary restraining order or injunction shall not constitute a title defect, lien, or encumbrance on the real property.

SEC. 3. 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 restraining order or injunction 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 restraining order or injunction issued pursuant to Section 11573 may include closure of the premises pending trial when a prior order or injunction does not result in the abatement of the nuisance. The duration of the order or injunction 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.

(H) Requiring the owner or person in control of the property to reside in the property until the nuisance is abated. The order shall specify the number of hours per day or per week the owner or person in control of

the property must be physically present in the property. In determining this amount, the court shall consider the nature and severity of the nuisance.

(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. 4. Section 11581 of the Health and Safety Code is amended to read:

11581. (a) If the existence of the nuisance is established in the action, an order of abatement shall be entered as a part of the judgment, which order shall direct the removal from the building or place of all fixtures, musical instruments, and other movable property used in conducting, maintaining, aiding, or abetting the nuisance and shall direct their sale in the manner provided for the sale of chattels under execution.

(b) (1) The order shall provide for the effectual closing of the building or place against its use for any purpose, and for keeping it closed for a period of one year. This subdivision is intended to give priority to closure. Any alternative to closure may be considered only as provided in this section.

(2) In addition, the court may assess a civil penalty not to exceed twenty-five thousand dollars ($25,000) against any or all of the defendants, based upon the severity of the nuisance and its duration.

(3) One-half of the civil penalties collected pursuant to this section shall be deposited in the Restitution Fund in the State Treasury, the proceeds of which shall be available only upon appropriation by the Legislature to indemnify persons filing claims pursuant to Article 1 (commencing with Section 13959) of Chapter 5 of Part 4 of Division 3 of Title 2 of the Government Code and one-half of the civil penalties collected shall be paid to the city in which the judgment was entered, if the action was brought by the city attorney or city prosecutor. If the action was brought by a district attorney, one-half of the civil penalties collected shall be paid to the treasurer of the county in which the judgment was entered.

(c) (1) If the court finds that any vacancy resulting from closure of the building or place may create a nuisance or that closure is otherwise harmful to the community, in lieu of ordering the building or place closed, the court may order the person who is responsible for the existence of the nuisance, or the person who knowingly permits controlled substances to be unlawfully sold, served, stored, kept, or given away in or from a building or place he or she owns, to pay damages in an amount equal to the fair market rental value of the building or place for one year to the city or county in whose jurisdiction the nuisance is located for the purpose of carrying out their drug abuse treatment, prevention, and education programs. If awarded to a city, eligible

programs may include those developed as a result of cooperative programs among schools, community agencies, and the local law enforcement agency. These funds shall not be used to supplant existing city, county, state, or federal resources used for drug prevention and education programs.

(2) For purposes of this subdivision, the actual amount of rent being received for the rental of the building or place, or the existence of any vacancy therein, may be considered, but shall not be the sole determinant of the fair market rental value. Expert testimony may be used to determine the fair market rental value.

(d) This section shall become operative on January 1, 1996.

SEC. 5. Section 11226 of the Penal Code is amended to read:

11226. Whenever there is reason to believe that a nuisance as defined in this article is kept, maintained or is in existence in any county, the district attorney, in the name of the people of the State of California, or the city attorney of an incorporated city or any city and county may, or any citizen of the state resident within the county, in his or her own name may, maintain an action in equity to abate and prevent the nuisance and to perpetually enjoin the person conducting or maintaining it, and the owner, lessee or agent of the building, or place, in or upon which the nuisance exists, from directly or indirectly maintaining or permitting it.

The complaint in the action shall be verified unless filed by the district attorney or the city attorney.

SEC. 6. Section 11227 of the Penal Code is amended to read:

11227. (a) Whenever the existence of a nuisance is shown in an action brought under this article to the satisfaction of the court or judge thereof, either by verified complaint or affidavit, the court or judge shall allow a temporary restraining order or injunction to abate and prevent the continuance or recurrence of the nuisance.

(b) A temporary restraining order or injunction may enjoin subsequent owners, commercial lessees, or agents who acquire the building or place where the nuisance exists with notice of the order or injunction, specifying that the owner of the property subject to the temporary restraining order or injunction shall notify any prospective purchaser, commercial lessee, or other successor in interest of the existence of the order or injunction, and of its application to successors in interest, prior to entering into any agreement to sell or lease the property. The temporary restraining order or injunction shall not constitute a title defect, lien, or encumbrance on the real property.

SEC. 7. Section 11230 of the Penal Code is amended to read:

11230. (a) (1) If the existence of a nuisance is established in an action as provided in this article, an order of abatement shall be entered as a part of the judgment in the case, directing the removal from the building or place of all fixtures, musical instruments and movable

property used in conducting, maintaining, aiding or abetting the nuisance, and directing the sale thereof in the manner provided for the sale of chattels under execution, and the effectual closing of the building or place against its use for any purpose, and that it be kept closed for a period of one year, unless sooner released. If the court finds that any vacancy resulting from closure of the building or place may create a nuisance or that closure is otherwise harmful to the community, in lieu of ordering the building or place closed, the court may order the person who is responsible for the existence of the nuisance to pay damages in an amount equal to the fair market rental value of the building or place for one year to the city or county in whose jurisdiction the nuisance is located. The actual amount of rent being received for the rental of the building or place, or the existence of any vacancy therein, may be considered, but shall not be the sole determinant of the fair market rental value. Expert testimony may be used to determine the fair market rental value.

(2) While the order remains in effect as to closing, the building or place is and shall remain in the custody of the court.

(3) For removing and selling the movable property, the officer is entitled to charge and receive the same fees as he or she would for levying upon and selling like property on execution.

(4) For closing the premises and keeping them closed, a reasonable sum shall be allowed by the court.

(b) The court may assess a civil penalty not to exceed twenty-five thousand dollars ($25,000) against any and all of the defendants, based upon the severity of the nuisance and its duration.

(c) One-half of the civil penalties collected pursuant to this section shall be deposited in the Restitution Fund in the State Treasury, the proceeds of which shall be available for appropriation by the Legislature to indemnify persons filing claims pursuant to Article 1 (commencing with Section 13959) of Chapter 5 of Part 4 of Division 3 of Title 2 of the Government Code and one-half of the civil penalties collected shall be paid to the city in which the judgment was entered , if the action was brought by the city attorney or city prosecutor. If the action was brought by a district attorney, one-half of the civil penalties collected shall be paid to the treasurer of the county in which the judgment was entered.

CHAPTER 1058

An act to amend Sections 1628, 42100, 47602, 47604.3, 47605, 47613.1, and 47652 of, and to add Sections 47604.4, 47605.1, 47605.6,

47605.8, and 47612.1 to, the Education Code, relating to charter schools.

[Approved by Governor September 29, 2002. Filed with Secretary of State September 29, 2002.]

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

SECTION 1. Section 1628 of the Education Code is amended to read:

1628. On or before September 15 each year, the county superintendent of schools shall prepare and file with the Superintendent of Public Instruction, along with the statements received pursuant to subdivision (b) of Section 42100, a statement of all receipts and expenditures of the county office of education for the preceding fiscal year. The statement shall be in a format or on forms prescribed by the Superintendent of Public Instruction, in accordance with regulations adopted by the State Board of Education. These forms may be amended periodically by the Superintendent of Public Instruction to accommodate changes in statute or government reporting standards.

SEC. 2. Section 42100 of the Education Code is amended to read:

42100. (a) On or before September 15, the governing board of each school district shall approve, in a format prescribed by the Superintendent of Public Instruction, an annual statement of all receipts and expenditures of the district for the preceding fiscal year and shall file the statement, along with the statement received pursuant to subdivision (b), with the county superintendent of schools. On or before October 15, the county superintendent of schools shall verify the mathematical accuracy of the statements and shall transmit a copy to the Superintendent of Public Instruction.

(b) On or before September 15, each charter school shall approve, in a format prescribed by the Superintendent of Public Instruction, an annual statement of all receipts and expenditures of the charter school for the preceding fiscal year and shall file the statement with the entity that approved the charter school.

(c) The forms prescribed by the Superintendent of Public Instruction shall be adopted as regulations by the State Board of Education, and may be amended periodically to accommodate changes in statute or government reporting standards.

SEC. 3. Section 47602 of the Education Code is amended to read:

47602. (a) (1) In the 1998–99 school year, the maximum total number of charter schools authorized to operate in this state shall be 250. In the 1999–2000 school year, and in each successive school year thereafter, an additional 100 charter schools are authorized to operate in this state each successive school year. For the purposes of implementing

this section, the State Board of Education shall assign a number to each charter petition that it grants pursuant to subdivision (j) of Section 47605 or Section 47605.8 and to each charter notice it receives pursuant to this part, based on the chronological order in which the notice is received. Each number assigned by the state board on or after January 1, 2003, shall correspond to a single petition that identifies a charter school that will operate within the geographic and site limitations of this part. The State Board of Education shall develop a numbering system for charter schools that identifies each school associated with a charter and that operates within the existing limit on the number of charter schools that can be approved each year. For purposes of this section, sites that share educational programs and serve similar pupil populations may not be counted as separate schools. Sites that do not share a common educational program shall be considered separate schools for purposes of this section. The limits contained in this paragraph may not be waived by the State Board of Education pursuant to Section 33050 or any other provision of law.

(2) By July 1, 2003, the Legislative Analyst shall, pursuant to the criteria in Section 47616.5, report to the Legislature on the effectiveness of the charter school approach authorized under this part and recommend whether to expand or reduce the annual rate of growth of charter schools authorized pursuant to this section.

(b) No charter shall be granted under this part that authorizes the conversion of any private school to a charter school. No charter school shall receive any public funds for a pupil if the pupil also attends a private school that charges the pupil's family for tuition. The State Board of Education shall adopt regulations to implement this section.

SEC. 4. Section 47604.3 of the Education Code is amended to read:

47604.3. A charter school shall promptly respond to all reasonable inquiries, including, but not limited to, inquiries regarding its financial records, from its chartering authority, the county office of education that has jurisdiction over the school's chartering authority, or from the Superintendent of Public Instruction and shall consult with the chartering authority, the county office of education, or the Superintendent of Public Instruction regarding any inquiries.

SEC. 5. Section 46704.4 is added to the Education Code, to read:

47604.4. (a) In addition to the authority granted by Section 47604.3, a county superintendent of schools may, based upon written complaints by parents or other information that justifies the investigation, monitor the operations of a charter school located within that county and conduct an investigation into the operations of that charter school. If a county superintendent of schools monitors or investigates a charter school pursuant to this section, the county office

of education shall not incur any liability beyond the cost of the investigation.

(b) A charter school shall notify the county superintendent of schools of the county in which it is located of the location of the charter school, including the location of each site, if applicable, prior to commencing operations.

SEC. 6. Section 47605 of the Education Code is amended to read:

47605. (a) (1) Except as set forth in paragraph (2), a petition for the establishment of a charter school within any school district may be circulated by any one or more persons seeking to establish the charter school. A petition for the establishment of a charter school shall identify a single charter school that will operate within the geographic boundaries of that school district. A charter school may propose to operate at multiple sites within the school district, as long as each location is identified in the charter school petition. 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.

(4) After receiving approval of its petition, a charter school that proposes to establish operations at one or more additional sites within the jurisdictional boundaries of the school district shall request a material revision to its charter and shall notify the governing board of the school district of those additional locations. The governing board of the

school district shall consider whether to approve those additional locations at an open, public meeting. If the additional locations are approved by the governing board of the school districts, they shall be a material revision to the charter school's charter.

(5) Notwithstanding subdivision (a), a charter school that is unable to locate within the jurisdiction of the chartering school district may establish one site outside the boundaries of the school district, but within the county within which that school district is located, if the school district where the charter school proposes to operate is notified in advance of the charter petition approval, the county superintendent of schools and the Superintendent of Public Instruction are notified of the location of the charter school before it commences operations and either of the following circumstances exist:

(A) The school has attempted to locate a single site or facility to house the entire program but such a facility or site is unavailable in the area in which the school chooses to locate.

(B) The site is needed for temporary use during a construction or expansion project.

(6) Commencing January 1, 2003, a petition to establish a charter school may not be approved to serve pupils in a grade level that is not served by the school district of the governing board considering the petition, unless the petition proposes to serve pupils in all of the grade levels served by that school district.

(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) (i) 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.

(ii) If the proposed school will serve high school pupils, a description of how the charter school will inform parents about the transferability of courses to other public high schools and the eligibility of courses to meet college entrance requirements. Courses offered by the charter school that are accredited by the Western Association of Schools and Colleges may be considered transferable and courses approved by the University of California or the California State University as creditable under the ''A'' to ''G'' admissions criteria may be considered to meet college entrance requirements.

(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).

(P) A description of the procedures to be used if the charter school closes. The procedures shall ensure a final audit of the school to determine the disposition of all assets and liabilities of the charter school, including plans for disposing of any net assets and for the maintenance and transfer of pupil records.

(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 description of the facilities to be used by the charter school shall specify where the school intends to locate. The petitioner or petitioners shall also be required to provide financial statements that include a proposed first-year operational budget, including startup costs, and cashflow 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 applicable county superintendent of schools, the State Department of Education, and 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 the county board of education. The county board of education 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, and the state board may approve the petition, in accordance with subdivision (b). Any charter school that receives approval of its petition from a county board of education or from the State Board of Education on appeal shall be subject to the same requirements concerning geographic location that it would otherwise be subject to if it receives approval from the entity to whom it originally submits its petition. A charter petition that is submitted to either a county board of education or to the State Board of Education shall meet all otherwise applicable petition requirements, including the identification of the proposed site or sites where the charter school will operate.

(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 based on an appeal 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 Department of Education and 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 through an appeal to 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, the Controller, the county superintendent of schools of the county in which the charter school is sited, unless the county board of education of the county in which the charter school is sited is the 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. 7. Section 47605.1 is added to the Education Code, to read:

47605.1. (a) (1) Notwithstanding any other provision of law, a charter school that is granted a charter from the governing board of a school district or county office of education after July 1, 2002, and commences providing educational services to pupils on or after July 1, 2002, shall locate in accordance with the geographic and site limitations of this part.

(2) Notwithstanding any other provision of law, a charter school that is granted a charter by the State Board of Education after July 1, 2002, and commences providing educational services to pupils on or after July 1, 2002, based on the denial of a petition by the governing board of a

school district or county board of education, as described in paragraphs (1) and (2) of subdivision (j) of Section 47605, may locate only within the geographic boundaries of the chartering entity that initially denied the petition for the charter.

(3) A charter school that receives approval of its charter from a governing board of a school district, a county office of education, or the State Board of Education prior to July 1, 2002, but does not commence operations until after January 1, 2003, shall be subject to the geographic limitations of the part, in accordance with subdivision (e).

(b) Nothing in this section is intended to affect the admission requirements contained in subdivision (d) of Section 47605.

(c) Notwithstanding any other provision, a charter school may establish a resource center, meeting space, or other satellite facility located in a county adjacent to that in which the charter school is authorized if the following conditions are met:

(1) The facility is used exclusively for the educational support of pupils who are enrolled in nonclassroom-based independent study of the charter school.

(2) The charter school provides its primary educational services in, and a majority of the pupils it serves are residents of, the county in which the school is authorized.

(d) Notwithstanding subdivision (a) or subdivision (a) of Section 47605, a charter school that is unable to locate within the geographic boundaries of the chartering school district may establish one site outside the boundaries of the school district, but within the county within which that school district is located, if the school district where the charter school proposes to operate is notified in advance of the charter petition approval, the county superintendent of schools is notified of the location of the charter school before it commences operations, and either of the following circumstances exist:

(1) The school has attempted to locate a single site or facility to house the entire program but such a facility or site is unavailable in the area in which the school chooses to locate.

(2) The site is needed for temporary use during a construction or expansion project.

(e) (1) For a charter school that was granted approval of its charter prior to July 1, 2002, and provided educational services to pupils before July 1, 2002, this section shall only apply to any new educational services or schoolsites established or acquired by the charter school on or after July 1, 2002.

(2) For a charter school that was granted approval of its charter prior to July 1, 2002, but did not provide educational services to pupils before July 1, 2002, this section shall only apply upon the expiration of a charter that is in existence on January 1, 2003.

(3) Notwithstanding other implementation timelines in this section, by June 30, 2005, or upon the expiration of a charter that is in existence on January 1, 2003, whichever is later, all charter schools shall be required to comply with this section for schoolsites at which education services are provided to pupils prior to or after July 1, 2002, regardless of whether the charter school initially received approval of its charter school petition prior to July 1, 2002. To achieve compliance with this section, a charter school shall be required to receive approval of a charter petition in accordance with this section and Section 47605.

(4) Nothing in this section is intended to affect the authority of a governmental entity to revoke a charter that is granted on or before the effective date of this section.

(f) A charter school that submits its petition directly to a county board of education, as authorized by Sections 47605.5 or 47605.6, may establish charter school operations only within the geographical boundaries of the county in which that county board of education has jurisdiction.

(g) Notwithstanding any other provision of law, the jurisdictional limitations set forth in this section do not apply to a charter school that provides instruction exclusively in partnership with any of the following:

(1) The federal Workforce Investment Act of 1998 (29 U.S.C. Sec. 2801 et seq.).

(2) Federally affiliated Youth Build programs.

(3) Federal job corps training or instruction provided pursuant to a memorandum of understanding with the federal provider.

(4) The California Conservation Corps or local conservation corps certified by the California Conservation Corps pursuant to Sections 14507.5 or 14406 of the Public Resources Code.

(5) Instruction provided to juvenile court school pupils pursuant to subdivision (c) of Section 42238.18 or pursuant to Section 1981 for individuals who are placed in a residential facility.

SEC. 8. Section 47605.6 is added to the Education Code, to read:

47605.6. (a) (1) In addition to the authority provided by Section 47605.5, a county board of education may also approve a petition for the operation of a charter school that operates at one or more sites within the geographic boundaries of the county and that provides instructional services that are not generally provided by a county office of education. A county board of education may only approve a countywide charter if it finds, in addition to the other requirements of this section, that the educational services to be provided by the charter school will offer services to a pupil population that will benefit from those services and that cannot be served as well by a charter school that operates in only one school district in the county. A petition for the establishment of a

countywide charter school pursuant to this subdivision may be circulated throughout the county by any one or more persons seeking to establish the charter school. The petition may be submitted to the county board of education 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 residing within the county 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 and each of the school districts where the charter school petitioner proposes to operate a facility has received at least 30 days notice of the petitioner's intent to operate a school pursuant to this section.

(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 and each of the school districts where the charter school petitioner proposes to operate a facility has received at least 30 days notice of the petitioner's intent to operate a school pursuant to this section.

(2) An existing public school may not be converted to a charter school in accordance with this section.

(3) After receiving approval of its petition, a charter school that proposes to establish operations at additional sites within the geographic boundaries of the county board of education shall notify the school districts where those sites will be located. The charter school shall also request a material revision of its charter by the county board of education that approved its charter and the county board shall consider whether to approve those additional locations at an open, public meeting, held no sooner than 30 days following notification of the school districts where the sites will be located. If approved, the location of the approved sites shall be a material revision of the school's approved charter.

(4) A petition shall include a prominent statement indicating 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 60 days after receiving a petition, in accordance with subdivision (a), the county board of education shall hold a public hearing on the provisions of the charter, at which time the county board of education shall consider the level of support for the petition by teachers, parents or guardians, and the school districts where the charter school petitioner proposes to place school facilities. Following review of the petition and the public hearing, the county board of education shall either

grant or deny the charter within 90 days of receipt of the petition. However, this date may be extended by an additional 30 days if both parties agree to the extension. A county board of education may impose any additional requirements beyond those required by this section that it considers necessary for the sound operation of a countywide charter school. A county board of education may grant a charter for the operation of a school under this part only if the board is satisfied that granting the charter is consistent with sound educational practice and that the charter school has reasonable justification for why it could not be established by petition to a school district pursuant to Section 47605. The county board of education shall deny a petition for the establishment of a charter school if the board finds, one or more of the following:

(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 location of each charter school facility that the petitioner proposes to operate.

(E) The governance structure of the school, including, but not limited to, the process to be followed by the school to ensure parental involvement.

(F) The qualifications to be met by individuals to be employed by the school.

(G) 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.

(H) 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.

(I) The manner in which annual, independent, financial audits shall be conducted, in accordance with regulations established by the State Board of Education, and the manner in which audit exceptions and deficiencies shall be resolved.

(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 procedures to be followed by the charter school and the county board of education to resolve disputes relating to provisions of the charter.

(M) 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).

(6) Any other basis that the board finds justifies the denial of the petition.

(c) A county board of education that approves a petition for the operation of a countywide charter may, as a condition of charter approval, enter into an agreement with a third party, at the expense of the charter school, to oversee, monitor, and report to the county board of education on the operations of the charter school. The county board of education may prescribe the aspects of the charter school's operations to be monitored by the third party and may prescribe appropriate requirements regarding the reporting of information concerning the operations of the charter school to the county board of education.

(d) (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.

(e) (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.

(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 county 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 county board of education 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.

(f) No county board of education shall require any employee of the county or a school district to be employed in a charter school.

(g) No county board of education shall require any pupil enrolled in a county program to attend a charter school.

(h) The county board of education 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, any school district where the charter school may operate and upon the county board of education. 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.

(i) In reviewing petitions for the establishment of charter schools within the county, the county board of education 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.

(j) 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 school districts within the county, the Superintendent of Public Instruction and to the State Board of Education.

(k) If a county board of education denies a petition, the petitioner may not elect to submit the petition for the establishment of the charter school to the State Board of Education.

(*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.

(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 the County Office of Education, State Controller 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. 9. Section 47605.8 is added to the Education Code, to read:

47605.8. (a) A petition for the operation of a state charter school may be submitted directly to the State Board of Education, and the board shall have the authority to approve a charter for the operation of a state charter school that may operate at multiple sites throughout the state. The State Board of Education shall adopt regulations, pursuant to the Administrative Procedure Act (Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code) for the implementation of this section. Any regulations adopted pursuant to this section shall ensure that a charter school approved pursuant to this section meets all requirements otherwise imposed on charter schools pursuant to this part, except that a charter school approved pursuant to this section shall not be subject to the geographic and site limitations otherwise imposed on charter schools.

(b) The State Board of Education may not approve a petition for the operation of a state charter school under this section unless the State Board of Education finds that the proposed state charter school will provide instructional services of statewide benefit that cannot be provided by a charter school operating in only one school district, or only in one county. The finding of the board in this regard shall be made part of the public record of the board's proceedings and shall precede the approval of the charter.

(c) The State Board of Education may, as a condition of charter petition approval, enter into an agreement with a third party, at the expense of the charter school, to oversee, monitor, and report on, the operations of the charter school. The State Board of Education may prescribe the aspects of the charter school's operations to be monitored by the third party and may prescribe appropriate requirements regarding

the reporting of information concerning the operations of the charter school to the State Board of Education.

(d) The State Board of Education shall not be required to approve a petition for the operation of a statewide charter school, and may deny approval based on any of the reasons set forth in subdivision (b) of Section 47605.6.

SEC. 10. Section 47612.1 is added to the Education Code, to read:

47612.1. Except for the requirement that a pupil be a California resident, subdivision (b) of Section 47612 shall not apply to a charter school program that provides instruction exclusively in partnership with any of the following:

(a) The federal Workforce Investment Act of 1998 (Pub. L. No. 105-220; 29 U.S.C. Sec. 2801, et seq.).

(b) Federally affiliated Youth Build programs.

(c) Federal job corps training or instruction provided pursuant to a memorandum of understanding with the federal provider.

(d) The California Conservation Corps or local conservation corps certified by the California Conservation Corps pursuant to Sections 14406 or 14507.5 of the Public Resources Code.

SEC. 11. Section 47613.1 of the Education Code is amended to read:

47613.1. The Superintendent of Public Instruction shall make all of the following apportionments on behalf of a charter school in a school district in which all schools have been converted to charter schools pursuant to Section 47606, and that elects not to be funded pursuant to the block grant funding model set forth in Section 47633 in each fiscal year that the charter school so elects:

(a) From funds appropriated to Section A of the State School Fund for apportionment for that fiscal year pursuant to Article 2 (commencing with Section 42238) of Chapter 7 of Part 24, an amount for each unit of current fiscal year regular average daily attendance in the charter school that is equal to the current fiscal year base revenue limit for the school district to which the charter petition was submitted.

(b) For each pupil enrolled in the charter school who is entitled to special education services, the state and federal funds for special education services for that pupil that would have been apportioned for that pupil to the school district to which the charter petition was submitted.

(c) Funds for the programs described in clause (i) of subparagraph (B) of paragraph (1) of subdivision (a) of Section 54761, and Sections 63000 and 64000, to the extent that any pupil enrolled in the charter school is eligible to participate.

SEC. 12. Section 47652 of the Education Code is amended to read:

47652. (a) Notwithstanding Section 41330, a charter school in its first year of operation shall be eligible to receive funding for the advance apportionment based on an estimate of average daily attendance for the current fiscal year, as approved by the local educational agency that granted its charter and the county office of education in which the charter-granting agency is located. For charter schools approved by the State Board of Education, estimated average daily attendance shall be approved by, and submitted directly to, and approved by, the State Department of Education. Not later than five business days following the end of the first 20 schooldays, a charter school receiving funding pursuant to this section shall report to the Department of Education its actual average daily attendance for that first month, and the Superintendent of Public Instruction shall adjust immediately, but not later than 45 days, the amount of its advance apportionment accordingly.

(b) A charter school in its first year of operation may only commence instruction within the first three months of the fiscal year beginning July 1 of that year. A charter school shall not be eligible for an apportionment pursuant to subdivision (a), or any other apportionment for a fiscal year in which instruction commenced after September 30 of that fiscal year.

SEC. 13. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

CHAPTER 1059

An act to amend Section 2018 of the Code of Civil Procedure, and to amend Sections 803 and 1524 of the Penal Code, relating to attorney work product, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 29, 2002. Filed with Secretary of State September 29, 2002.]

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

SECTION 1. Section 2018 of the Code of Civil Procedure is amended to read:

2018. (a) It is the policy of the state to: (1) preserve the rights of attorneys to prepare cases for trial with that degree of privacy necessary to encourage them to prepare their cases thoroughly and to investigate not only the favorable but the unfavorable aspects of those cases; and (2) to prevent attorneys from taking undue advantage of their adversary's industry and efforts.

(b) Subject to subdivision (c), the work product of an attorney is not discoverable unless the court determines that denial of discovery will unfairly prejudice the party seeking discovery in preparing that party's claim or defense or will result in an injustice.

(c) Any writing that reflects an attorney's impressions, conclusions, opinions, or legal research or theories shall not be discoverable under any circumstances.

(d) This section is intended to be a restatement of existing law relating to protection of work product. It is not intended to expand or reduce the extent to which work product is discoverable under existing law in any action. However, when a lawyer is suspected of knowingly participating in a crime or fraud, there is no protection of work product under this section in any official investigation by a law enforcement agency or proceeding or action brought by a public prosecutor in the name of the People of the State of California if the services of the lawyer were sought or obtained to enable or aid anyone to commit or plan to commit a crime or fraud. Nothing in this section is intended to limit an attorney's ability to request an in camera hearing as provided for in People v. Superior Court (Laff) (2001) 25 Cal.4th 703.

(e) The State Bar may discover the work product of an attorney against whom disciplinary charges are pending when it is relevant to issues of breach of duty by the lawyer, subject to applicable client approval and to a protective order, where requested and for good cause, to ensure the confidentiality of work product except for its use by the State Bar in disciplinary investigations and its consideration under seal in State Bar Court proceedings. For purposes of this section, whenever a client has initiated a complaint against an attorney, the requisite client approval shall be deemed to have been granted.

(f) In an action between an attorney and his or her client or former client, no work product privilege under this section exists if the work product is relevant to an issue of breach by the attorney of a duty to the attorney's client arising out of the attorney-client relationship.

For purposes of this section, ''client'' means a client as defined in Section 951 of the Evidence Code.

SEC. 2. Section 803 of the Penal Code is amended to read:

803. (a) Except as provided in this section, a limitation of time prescribed in this chapter is not tolled or extended for any reason.

(b) No time during which prosecution of the same person for the same conduct is pending in a court of this state is a part of a limitation of time prescribed in this chapter.

(c) A limitation of time prescribed in this chapter does not commence to run until the discovery of an offense described in this subdivision. This subdivision applies to an offense punishable by imprisonment in the state prison, a material element of which is fraud or breach of a fiduciary obligation, the commission of the crimes of theft or embezzlement upon an elder or dependent adult, or the basis of which is misconduct in office by a public officer, employee, or appointee, including, but not limited to, the following offenses:

(1) Grand theft of any type, forgery, falsification of public records, or acceptance of a bribe by a public official or a public employee.

(2) A violation of Section 72, 118, 118a, 132, or 134.

(3) A violation of Section 25540, of any type, or Section 25541 of the Corporations Code.

(4) A violation of Section 1090 or 27443 of the Government Code.

(5) Felony welfare fraud or Medi-Cal fraud in violation of Section 11483 or 14107 of the Welfare and Institutions Code.

(6) Felony insurance fraud in violation of Section 548 or 550 of this code or former Section 1871.1, or Section 1871.4, of the Insurance Code.

(7) A violation of Section 580, 581, 582, 583, or 584 of the Business and Professions Code.

(8) A violation of Section 22430 of the Business and Professions Code.

(9) A violation of Section 10690 of the Health and Safety Code.

(10) A violation of Section 529a.

(11) A violation of subdivision (d) or (e) of Section 368.

(d) If the defendant is out of the state when or after the offense is committed, the prosecution may be commenced as provided in Section 804 within the limitations of time prescribed by this chapter, and no time up to a maximum of three years during which the defendant is not within the state shall be a part of those limitations.

(e) A limitation of time prescribed in this chapter does not commence to run until the offense has been discovered, or could have reasonably been discovered, with regard to offenses under Division 7 (commencing with Section 13000) of the Water Code, under Chapter 6.5 (commencing with Section 25100) of, Chapter 6.7 (commencing with Section 25280) of, or Chapter 6.8 (commencing with Section 25300) of, Division 20 of, or Part 4 (commencing with Section 41500) of Division 26 of, the Health and Safety Code, or under Section 386, or offenses under Chapter 5 (commencing with Section 2000) of Division 2 of, Chapter 9 (commencing with Section 4000) of Division 2 of, Chapter 10 (commencing with Section 7301) of Division 3 of, or Chapter 19.5

(commencing with Section 22440) of Division 8 of, the Business and Professions Code.

(f) (1) Notwithstanding any other limitation of time described in this chapter, a criminal complaint may be filed within one year of the date of a report to a responsible adult or agency by a child under 18 years of age that the child is a victim of a crime described in Section 261, 286, 288, 288a, 288.5, 289, or 289.5.

(2) For purposes of this subdivision, a ''responsible adult'' or ''agency'' means a person or agency required to report pursuant to Section 11166. This subdivision applies only if both of the following occur:

(A) The limitation period specified in Section 800 or 801 has expired.

(B) The defendant has committed at least one violation of Section 261, 286, 288, 288a, 288.5, 289, or 289.5 against the same victim within the limitation period specified for that crime in either Section 800 or 801.

(3) (A) This subdivision applies to a cause of action arising before, on, or after January 1, 1990, the effective date of this subdivision, and it shall revive any cause of action barred by Section 800 or 801 if any of the following occurred or occurs:

(i) The complaint or indictment was filed on or before January 1, 1997, and it was filed within the time period specified in this subdivision.

(ii) The complaint or indictment is or was filed subsequent to January 1, 1997, and it is or was filed within the time period specified within this subdivision.

(iii) The victim made the report required by this subdivision to a responsible adult or agency after January 1, 1990, and a complaint or indictment was not filed within the time period specified in this subdivision, but a complaint or indictment is filed no later than 180 days after the date on which either a published opinion of the California Supreme Court, deciding whether retroactive application of this section is constitutional, becomes final or the United States Supreme Court files an opinion deciding the question of whether retroactive application of this subdivision is constitutional, whichever occurs first.

(iv) The victim made the report required by this subdivision to a responsible adult or agency after January 1, 1990, and a complaint or indictment was filed within the time period specified in this subdivision, but the indictment, complaint, or subsequently filed information was dismissed, but a new complaint or indictment is or was filed no later than 180 days after the date on which either a published opinion of the California Supreme Court, deciding whether retroactive application of this section is constitutional, becomes final or the United States Supreme Court files an opinion deciding the question of whether retroactive application of this subdivision is constitutional, whichever occurs first.

(B) (i) If the victim made the report required by this subdivision to a responsible adult or agency after January 1, 1990, and a complaint or indictment was filed within the time period specified in this subdivision, but the indictment, complaint, or subsequently filed information was dismissed, a new complaint or indictment may be filed notwithstanding any other provision of law, including, but not limited to, subdivision (c) of Section 871.5 and subdivision (b) of Section 1238.

(ii) An order dismissing an action filed under this subdivision, which is entered or becomes effective at any time prior to 180 days after the date on which either a published opinion of the California Supreme Court, deciding the question of whether retroactive application of this section is constitutional, becomes final or the United States Supreme Court files an opinion deciding the question of whether retroactive application of this subdivision is constitutional, whichever occurs first, shall not be considered an order terminating an action within the meaning of Section 1387.

(iii) Any ruling regarding the retroactivity of this subdivision or its constitutionality made in the course of the previous proceeding, including any review proceeding, shall not be binding upon refiling.

(g) (1) Notwithstanding any other limitation of time described in this chapter, a criminal complaint may be filed within one year of the date of a report to a California law enforcement agency by a person of any age alleging that he or she, while under the age of 18 years, was the victim of a crime described in Section 261, 286, 288, 288a, 288.5, 289, or 289.5.

(2) This subdivision applies only if both of the following occur:

(A) The limitation period specified in Section 800 or 801 has expired.

(B) The crime involved substantial sexual conduct, as described in subdivision (b) of Section 1203.066, excluding masturbation that is not mutual, and there is independent evidence that clearly and convincingly corroborates the victim's allegation. No evidence may be used to corroborate the victim's allegation that otherwise would be inadmissible during trial. Independent evidence does not include the opinions of mental health professionals.

(3) (A) This subdivision applies to a cause of action arising before, on, or after January 1, 1994, the effective date of this subdivision, and it shall revive any cause of action barred by Section 800 or 801 if any of the following occurred or occurs:

(i) The complaint or indictment was filed on or before January 1, 1997, and it was filed within the time period specified in this subdivision.

(ii) The complaint or indictment is or was filed subsequent to January 1, 1997, and it is or was filed within the time period specified within this subdivision.

(iii) The victim made the report required by this subdivision to a law enforcement agency after January 1, 1994, and a complaint or indictment was not filed within the time period specified in this subdivision, but a complaint or indictment is filed no later than 180 days after the date on which either a published opinion of the California Supreme Court, deciding the question of whether retroactive application of this subdivision is constitutional, becomes final or the United States Supreme Court files an opinion deciding the question of whether retroactive application of this subdivision is constitutional, whichever occurs first.

(iv) The victim made the report required by this subdivision to a law enforcement agency after January 1, 1994, and a complaint or indictment was filed within the time period specified in this subdivision, but the indictment, complaint, or subsequently filed information was dismissed, but a new complaint or indictment is filed no later than 180 days after the date on which either a published opinion of the California Supreme Court, deciding the question of whether retroactive application of this subdivision is constitutional, becomes final or the United States Supreme Court files an opinion deciding the question of whether retroactive application of this subdivision is constitutional, whichever occurs first.

(B) (i) If the victim made the report required by this subdivision to a law enforcement agency after January 1, 1994, and a complaint or indictment was filed within the time period specified in this subdivision, but the indictment, complaint, or subsequently filed information was dismissed, a new complaint or indictment may be filed notwithstanding any other provision of law, including, but not limited to, subdivision (c) of Section 871.5 and subdivision (b) of Section 1238.

(ii) An order dismissing an action filed under this subdivision, which is entered or becomes effective at any time prior to 180 days after the date on which either a published opinion of the California Supreme Court, deciding the question of whether retroactive application of this section is constitutional, becomes final or the United States Supreme Court files an opinion deciding the question of whether retroactive application of this subdivision is constitutional, whichever occurs first, shall not be considered an order terminating an action within the meaning of Section 1387.

(iii) Any ruling regarding the retroactivity of this subdivision or its constitutionality made in the course of the previous proceeding, by any trial court or any intermediate appellate court, shall not be binding upon refiling.

(h) (1) Notwithstanding any other limitation of time described in this chapter, a criminal complaint may be filed within one year of the date of a report to a California law enforcement agency by a person under 21

years of age, alleging that he or she, while under 18 years of age, was the victim of a crime described in Section 261, 286, 288, 288a, 288.5, 289, or 289.5.

(2) This subdivision applies only if both of the following occur:

(A) The limitation period specified in Section 800 or 801 has expired.

(B) The crime involved substantial sexual conduct, as described in subdivision (b) of Section 1203.066, excluding masturbation that is not mutual, and there is independent evidence that corroborates the victim's allegation. No evidence may be used to corroborate the victim's allegation that otherwise would be inadmissible during trial. Independent evidence does not include the opinions of mental health professionals.

(3) This subdivision applies to a cause of action arising before, on, or after January 1, 2002, the effective date of this subdivision, and it shall revive any cause of action barred by Section 800 or 801 if the complaint or indictment was filed within the time period specified by this subdivision.

(i) (1) Notwithstanding the limitation of time described in Section 800, the limitations period for commencing prosecution for a felony offense described in subparagraph (A) of paragraph (2) of subdivision (a) of Section 290, where the limitations period set forth in Section 800 has not expired as of January 1, 2001, or the offense is committed on or after January 1, 2001, shall be 10 years from the commission of the offense, or one year from the date on which the identity of the suspect is conclusively established by DNA testing, whichever is later, provided, however, that the one-year period from the establishment of the identity of the suspect shall only apply when either of the following conditions is met:

(A) For an offense committed prior to January 1, 2001, biological evidence collected in connection with the offense is analyzed for DNA type no later than January 1, 2004.

(B) For an offense committed on or after January 1, 2001, biological evidence collected in connection with the offense is analyzed for DNA type no later than two years from the date of the offense.

(2) In the event the conditions set forth in subparagraph (A) or (B) of paragraph (1) are not met, the limitations period for commencing prosecution for a felony offense described in subparagraph (A) of paragraph (2) of subdivision (a) of Section 290, where the limitations period set forth in Section 800 has not expired as of January 1, 2001, or the offense is committed on or after January 1, 2001, shall be 10 years from the commission of the offense.

(3) For purposes of this section, ''DNA'' means deoxyribonucleic acid.

(j) For any crime, the proof of which depends substantially upon evidence that was seized under a warrant, but which is unavailable to the prosecuting authority under the procedures described in People v. Superior Court (Laff) (2001) 25 Cal.4th 703, People v. Superior Court (Bauman & Rose) (1995) 37 Cal.App.4th 1757, or subdivision (c) of Section 1524, relating to claims of evidentiary privilege or attorney work product, the limitation of time prescribed in this chapter shall be tolled from the time of the seizure until final disclosure of the evidence to the prosecuting authority. Nothing in this section otherwise affects the definition or applicability of any evidentiary privilege or attorney work product.

(k) As used in subdivisions (f), (g), and (h), Section 289.5 refers to the statute enacted by Chapter 293 of the Statutes of 1991 relating to penetration by an unknown object.

SEC. 3. Section 1524 of the Penal Code is amended to read:

1524. (a) A search warrant may be issued upon any of the following grounds:

(1) When the property was stolen or embezzled.

(2) When the property or things were used as the means of committing a felony.

(3) When the property or things are in the possession of any person with the intent to use them as a means of committing a public offense, or in the possession of another to whom he or she may have delivered them for the purpose of concealing them or preventing their being discovered.

(4) When the property or things to be seized consist of any item or constitute any evidence that tends to show a felony has been committed, or tends to show that a particular person has committed a felony.

(5) When the property or things to be seized consist of evidence that tends to show that sexual exploitation of a child, in violation of Section 311.3, or possession of matter depicting sexual conduct of a person under the age of 18 years, in violation of Section 311.11, has occurred or is occurring.

(6) When there is a warrant to arrest a person.

(b) The property or things or person or persons described in subdivision (a) may be taken on the warrant from any place, or from any person in whose possession the property or things may be.

(c) Notwithstanding subdivision (a) or (b), no search warrant shall issue for any documentary evidence in the possession or under the control of any person, who is a lawyer as defined in Section 950 of the Evidence Code, a physician as defined in Section 990 of the Evidence Code, a psychotherapist as defined in Section 1010 of the Evidence Code, or a clergyman as defined in Section 1030 of the Evidence Code, and who is not reasonably suspected of engaging or having engaged in

criminal activity related to the documentary evidence for which a warrant is requested unless the following procedure has been complied with:

(1) At the time of the issuance of the warrant the court shall appoint a special master in accordance with subdivision (d) to accompany the person who will serve the warrant. Upon service of the warrant, the special master shall inform the party served of the specific items being sought and that the party shall have the opportunity to provide the items requested. If the party, in the judgment of the special master, fails to provide the items requested, the special master shall conduct a search for the items in the areas indicated in the search warrant.

(2) If the party who has been served states that an item or items should not be disclosed, they shall be sealed by the special master and taken to court for a hearing.

At the hearing, the party searched shall be entitled to raise any issues that may be raised pursuant to Section 1538.5 as well as a claim that the item or items are privileged, as provided by law. The hearing shall be held in the superior court. The court shall provide sufficient time for the parties to obtain counsel and make any motions or present any evidence. The hearing shall be held within three days of the service of the warrant unless the court makes a finding that the expedited hearing is impracticable. In that case the matter shall be heard at the earliest possible time.

If an item or items are taken to court for a hearing, any limitations of time prescribed in Chapter 2 (commencing with Section 797) of Title 3 of Part 2 shall be tolled from the time of the seizure until the final conclusion of the hearing, including any associated writ or appellate proceedings.

(3) The warrant shall, whenever practicable, be served during normal business hours. In addition, the warrant shall be served upon a party who appears to have possession or control of the items sought. If, after reasonable efforts, the party serving the warrant is unable to locate the person, the special master shall seal and return to the court, for determination by the court, any item that appears to be privileged as provided by law.

(d) As used in this section, a ''special master'' is an attorney who is a member in good standing of the California State Bar and who has been selected from a list of qualified attorneys that is maintained by the State Bar particularly for the purposes of conducting the searches described in this section. These attorneys shall serve without compensation. A special master shall be considered a public employee, and the governmental entity that caused the search warrant to be issued shall be considered the employer of the special master and the applicable public entity, for purposes of Division 3.6 (commencing with Section 810) of

Title 1 of the Government Code, relating to claims and actions against public entities and public employees. In selecting the special master, the court shall make every reasonable effort to ensure that the person selected has no relationship with any of the parties involved in the pending matter. Any information obtained by the special master shall be confidential and shall not be divulged except in direct response to inquiry by the court.

In any case in which the magistrate determines that, after reasonable efforts have been made to obtain a special master, a special master is not available and would not be available within a reasonable period of time, the magistrate may direct the party seeking the order to conduct the search in the manner described in this section in lieu of the special master.

(e) Any search conducted pursuant to this section by a special master may be conducted so as to permit the party serving the warrant or his or her designee to accompany the special master as he or she conducts his or her search. However, that party or his or her designee shall not participate in the search nor shall he or she examine any of the items being searched by the special master except upon agreement of the party upon whom the warrant has been served.

(f) As used in this section, ''documentary evidence'' includes, but is not limited to, writings, documents, blueprints, drawings, photographs, computer printouts, microfilms, X-rays, files, diagrams, ledgers, books, tapes, audio and video recordings, films or papers of any type or description.

(g) No warrant shall issue for any item or items described in Section 1070 of the Evidence Code.

(h) Notwithstanding any other law, no claim of attorney work product as described in Section 2018 of the Code of Civil Procedure shall be sustained where there is probable cause to believe that the lawyer is engaging or has engaged in criminal activity related to the documentary evidence for which a warrant is requested unless it is established at the hearing with respect to the documentary evidence seized under the warrant that the services of the lawyer were not sought or obtained to enable or aid anyone to commit or plan to commit a crime or a fraud.

(i) Nothing in this section is intended to limit an attorney's ability to request an in camera hearing pursuant to the holding of the Supreme Court of California in People v. Superior Court (Laff) (2001) 25 Cal.4th 703.

SEC. 3.2. Section 1524 of the Penal Code is amended to read:

1524. (a) A search warrant may be issued upon any of the following grounds:

(1) When the property was stolen or embezzled.

(2) When the property or things were used as the means of committing a felony.

(3) When the property or things are in the possession of any person with the intent to use them as a means of committing a public offense, or in the possession of another to whom he or she may have delivered them for the purpose of concealing them or preventing their being discovered.

(4) When the property or things to be seized consist of any item or constitute any evidence that tends to show a felony has been committed, or tends to show that a particular person has committed a felony.

(5) When the property or things to be seized consist of evidence that tends to show that sexual exploitation of a child, in violation of Section 311.3, or possession of matter depicting sexual conduct of a person under the age of 18 years, in violation of Section 311.11, has occurred or is occurring.

(6) When there is a warrant to arrest a person.

(7) When a provider of electronic communication service or remote computing service has records or evidence, as specified in Section 1524.3, showing that property was stolen or embezzled constituting a misdemeanor, or that property or things are in the possession of any person with the intent to use them as a means of committing a misdemeanor public offense, or in the possession of another to whom he or she may have delivered them for the purpose of concealing them or preventing their discovery.

(b) The property or things or person or persons described in subdivision (a) may be taken on the warrant from any place, or from any person in whose possession the property or things may be.

(c) Notwithstanding subdivision (a) or (b), no search warrant shall issue for any documentary evidence in the possession or under the control of any person, who is a lawyer as defined in Section 950 of the Evidence Code, a physician as defined in Section 990 of the Evidence Code, a psychotherapist as defined in Section 1010 of the Evidence Code, or a clergyman as defined in Section 1030 of the Evidence Code, and who is not reasonably suspected of engaging or having engaged in criminal activity related to the documentary evidence for which a warrant is requested unless the following procedure has been complied with:

(1) At the time of the issuance of the warrant the court shall appoint a special master in accordance with subdivision (d) to accompany the person who will serve the warrant. Upon service of the warrant, the special master shall inform the party served of the specific items being sought and that the party shall have the opportunity to provide the items requested. If the party, in the judgment of the special master, fails to

provide the items requested, the special master shall conduct a search for the items in the areas indicated in the search warrant.

(2) If the party who has been served states that an item or items should not be disclosed, they shall be sealed by the special master and taken to court for a hearing.

At the hearing, the party searched shall be entitled to raise any issues that may be raised pursuant to Section 1538.5 as well as a claim that the item or items are privileged, as provided by law. The hearing shall be held in the superior court. The court shall provide sufficient time for the parties to obtain counsel and make any motions or present any evidence. The hearing shall be held within three days of the service of the warrant unless the court makes a finding that the expedited hearing is impracticable. In that case the matter shall be heard at the earliest possible time.

If an item or items are taken to court for a hearing, any limitations of time prescribed in Chapter 2 (commencing with Section 797) of Title 3 of Part 2 shall be tolled from the time of the seizure until the final conclusion of the hearing, including any associated writ or appellate proceedings.

(3) The warrant shall, whenever practicable, be served during normal business hours. In addition, the warrant shall be served upon a party who appears to have possession or control of the items sought. If, after reasonable efforts, the party serving the warrant is unable to locate the person, the special master shall seal and return to the court, for determination by the court, any item that appears to be privileged as provided by law.

(d) As used in this section, a ''special master'' is an attorney who is a member in good standing of the California State Bar and who has been selected from a list of qualified attorneys that is maintained by the State Bar particularly for the purposes of conducting the searches described in this section. These attorneys shall serve without compensation. A special master shall be considered a public employee, and the governmental entity that caused the search warrant to be issued shall be considered the employer of the special master and the applicable public entity, for purposes of Division 3.6 (commencing with Section 810) of Title 1 of the Government Code, relating to claims and actions against public entities and public employees. In selecting the special master, the court shall make every reasonable effort to ensure that the person selected has no relationship with any of the parties involved in the pending matter. Any information obtained by the special master shall be confidential and shall not be divulged except in direct response to inquiry by the court.

In any case in which the magistrate determines that, after reasonable efforts have been made to obtain a special master, a special master is not

available and would not be available within a reasonable period of time, the magistrate may direct the party seeking the order to conduct the search in the manner described in this section in lieu of the special master.

(e) Any search conducted pursuant to this section by a special master may be conducted in a manner that permits the party serving the warrant or his or her designee to accompany the special master as he or she conducts his or her search. However, that party or his or her designee shall not participate in the search nor shall he or she examine any of the items being searched by the special master except upon agreement of the party upon whom the warrant has been served.

(f) As used in this section, ''documentary evidence'' includes, but is not limited to, writings, documents, blueprints, drawings, photographs, computer printouts, microfilms, X-rays, files, diagrams, ledgers, books, tapes, audio and video recordings, films or papers of any type or description.

(g) No warrant shall issue for any item or items described in Section 1070 of the Evidence Code.

(h) Notwithstanding any other law, no claim of attorney work product as described in Section 2018 of the Code of Civil Procedure shall be sustained where there is probable cause to believe that the lawyer is engaging or has engaged in criminal activity related to the documentary evidence for which a warrant is requested unless it is established at the hearing with respect to the documentary evidence seized under the warrant that the services of the lawyer were not sought or obtained to enable or aid anyone to commit or plan to commit a crime or a fraud.

(i) Nothing in this section is intended to limit an attorney's ability to request an in camera hearing pursuant to the holding of the Supreme Court of California in People v. Superior Court (Laff) (2001) 25 Cal.4th 703.

SEC. 3.4. Section 1524 of the Penal Code is amended to read:

1524. (a) A search warrant may be issued upon any of the following grounds:

(1) When the property was stolen or embezzled.

(2) When the property or things were used as the means of committing a felony.

(3) When the property or things are in the possession of any person with the intent to use them as a means of committing a public offense, or in the possession of another to whom he or she may have delivered them for the purpose of concealing them or preventing their being discovered.

(4) When the property or things to be seized consist of any item or constitute any evidence that tends to show a felony has been committed, or tends to show that a particular person has committed a felony.

(5) When the property or things to be seized consist of evidence that tends to show that sexual exploitation of a child, in violation of Section 311.3, or possession of matter depicting sexual conduct of a person under the age of 18 years, in violation of Section 311.11, has occurred or is occurring.

(6) When there is a warrant to arrest a person.

(b) The property or things or person or persons described in subdivision (a) may be taken on the warrant from any place, or from any person in whose possession the property or things may be.

(c) Notwithstanding subdivision (a) or (b), no search warrant shall issue for any documentary evidence in the possession or under the control of any person, who is a lawyer as defined in Section 950 of the Evidence Code, a physician as defined in Section 990 of the Evidence Code, a psychotherapist as defined in Section 1010 of the Evidence Code, a licensed private investigator as defined in Section 7521 of the Business and Professions Code who has done any work for an attorney or has been appointed by a court to assist a defendant in propria persona, or a clergyman as defined in Section 1030 of the Evidence Code, and who is not reasonably suspected of engaging or having engaged in criminal activity related to the documentary evidence for which a warrant is requested unless the following procedure has been complied with:

(1) At the time of the issuance of the warrant the court shall appoint a special master in accordance with subdivision (d) to accompany the person who will serve the warrant. Upon service of the warrant, the special master shall inform the party served of the specific items being sought and that the party shall have the opportunity to provide the items requested. If the party, in the judgment of the special master, fails to provide the items requested, the special master shall conduct a search for the items in the areas indicated in the search warrant.

(2) If the party who has been served states that an item or items should not be disclosed, they shall be sealed by the special master and taken to court for a hearing.

At the hearing, the party searched shall be entitled to raise any issues that may be raised pursuant to Section 1538.5 as well as a claim that the item or items are privileged, as provided by law. The hearing shall be held in the superior court. The court shall provide sufficient time for the parties to obtain counsel and make any motions or present any evidence. The hearing shall be held within three days of the service of the warrant unless the court makes a finding that the expedited hearing is impracticable. In that case the matter shall be heard at the earliest possible time.

If an item or items are taken to court for a hearing, any limitations of time prescribed in Chapter 2 (commencing with Section 797) of Title 3

of Part 2 shall be tolled from the time of the seizure until the final conclusion of the hearing, including any associated writ or appellate proceedings.

(3) The warrant shall, whenever practicable, be served during normal business hours. In addition, the warrant shall be served upon a party who appears to have possession or control of the items sought. If, after reasonable efforts, the party serving the warrant is unable to locate the person, the special master shall seal and return to the court, for determination by the court, any item that appears to be privileged as provided by law.

(d) As used in this section, a ''special master'' is an attorney who is a member in good standing of the California State Bar and who has been selected from a list of qualified attorneys that is maintained by the State Bar particularly for the purposes of conducting the searches described in this section. These attorneys shall serve without compensation. A special master shall be considered a public employee, and the governmental entity that caused the search warrant to be issued shall be considered the employer of the special master and the applicable public entity, for purposes of Division 3.6 (commencing with Section 810) of Title 1 of the Government Code, relating to claims and actions against public entities and public employees. In selecting the special master, the court shall make every reasonable effort to ensure that the person selected has no relationship with any of the parties involved in the pending matter. Any information obtained by the special master shall be confidential and shall not be divulged except in direct response to inquiry by the court.

In any case in which the magistrate determines that, after reasonable efforts have been made to obtain a special master, a special master is not available and would not be available within a reasonable period of time, the magistrate may direct the party seeking the order to conduct the search in the manner described in this section in lieu of the special master.

(e) Any search conducted pursuant to this section by a special master may be conducted in a manner that permits the party serving the warrant or his or her designee to accompany the special master as he or she conducts his or her search. However, that party or his or her designee shall not participate in the search nor shall he or she examine any of the items being searched by the special master except upon agreement of the party upon whom the warrant has been served.

(f) As used in this section, ''documentary evidence'' includes, but is not limited to, writings, documents, blueprints, drawings, photographs, computer printouts, microfilms, X-rays, files, diagrams, ledgers, books, tapes, audio and video recordings, films or papers of any type or description.

(g) No warrant shall issue for any item or items described in Section 1070 of the Evidence Code.

(h) Notwithstanding any other law, no claim of attorney work product as described in Section 2018 of the Code of Civil Procedure shall be sustained where there is probable cause to believe that the lawyer is engaging or has engaged in criminal activity related to the documentary evidence for which a warrant is requested unless it is established at the hearing with respect to the documentary evidence seized under the warrant that the services of the lawyer were not sought or obtained to enable or aid anyone to commit or plan to commit a crime or a fraud.

(i) Nothing in this section is intended to limit an attorney's ability to request an in camera hearing pursuant to the holding of the Supreme Court of California in People v. Superior Court (Laff) (2001) 25 Cal.4th 703.

SEC. 3.6. Section 1524 of the Penal Code is amended to read:

1524. (a) A search warrant may be issued upon any of the following grounds:

(1) When the property was stolen or embezzled.

(2) When the property or things were used as the means of committing a felony.

(3) When the property or things are in the possession of any person with the intent to use them as a means of committing a public offense, or in the possession of another to whom he or she may have delivered them for the purpose of concealing them or preventing their being discovered.

(4) When the property or things to be seized consist of any item or constitute any evidence that tends to show a felony has been committed, or tends to show that a particular person has committed a felony.

(5) When the property or things to be seized consist of evidence that tends to show that sexual exploitation of a child, in violation of Section 311.3, or possession of matter depicting sexual conduct of a person under the age of 18 years, in violation of Section 311.11, has occurred or is occurring.

(6) When there is a warrant to arrest a person.

(7) When a provider of electronic communication service or remote computing service has records or evidence, as specified in Section 1524.3, showing that property was stolen or embezzled constituting a misdemeanor, or that property or things are in the possession of any person with the intent to use them as a means of committing a misdemeanor public offense, or in the possession of another to whom he or she may have delivered them for the purpose of concealing them or preventing their discovery.

(b) The property or things or person or persons described in subdivision (a) may be taken on the warrant from any place, or from any person in whose possession the property or things may be.

(c) Notwithstanding subdivision (a) or (b), no search warrant shall issue for any documentary evidence in the possession or under the control of any person, who is a lawyer as defined in Section 950 of the Evidence Code, a physician as defined in Section 990 of the Evidence Code, a psychotherapist as defined in Section 1010 of the Evidence Code, a licensed private investigator as defined in Section 7521 of the Business and Professions Code who has done any work for an attorney or has been appointed by a court to assist a defendant in propria persona, or a clergyman as defined in Section 1030 of the Evidence Code, and who is not reasonably suspected of engaging or having engaged in criminal activity related to the documentary evidence for which a warrant is requested unless the following procedure has been complied with:

(1) At the time of the issuance of the warrant the court shall appoint a special master in accordance with subdivision (d) to accompany the person who will serve the warrant. Upon service of the warrant, the special master shall inform the party served of the specific items being sought and that the party shall have the opportunity to provide the items requested. If the party, in the judgment of the special master, fails to provide the items requested, the special master shall conduct a search for the items in the areas indicated in the search warrant.

(2) If the party who has been served states that an item or items should not be disclosed, they shall be sealed by the special master and taken to court for a hearing.

At the hearing, the party searched shall be entitled to raise any issues that may be raised pursuant to Section 1538.5 as well as a claim that the item or items are privileged, as provided by law. The hearing shall be held in the superior court. The court shall provide sufficient time for the parties to obtain counsel and make any motions or present any evidence. The hearing shall be held within three days of the service of the warrant unless the court makes a finding that the expedited hearing is impracticable. In that case the matter shall be heard at the earliest possible time.

If an item or items are taken to court for a hearing, any limitations of time prescribed in Chapter 2 (commencing with Section 797) of Title 3 of Part 2 shall be tolled from the time of the seizure until the final conclusion of the hearing, including any associated writ or appellate proceedings.

(3) The warrant shall, whenever practicable, be served during normal business hours. In addition, the warrant shall be served upon a party who appears to have possession or control of the items sought. If, after

reasonable efforts, the party serving the warrant is unable to locate the person, the special master shall seal and return to the court, for determination by the court, any item that appears to be privileged as provided by law.

(d) As used in this section, a ''special master'' is an attorney who is a member in good standing of the California State Bar and who has been selected from a list of qualified attorneys that is maintained by the State Bar particularly for the purposes of conducting the searches described in this section. These attorneys shall serve without compensation. A special master shall be considered a public employee, and the governmental entity that caused the search warrant to be issued shall be considered the employer of the special master and the applicable public entity, for purposes of Division 3.6 (commencing with Section 810) of Title 1 of the Government Code, relating to claims and actions against public entities and public employees. In selecting the special master, the court shall make every reasonable effort to ensure that the person selected has no relationship with any of the parties involved in the pending matter. Any information obtained by the special master shall be confidential and shall not be divulged except in direct response to inquiry by the court.

In any case in which the magistrate determines that, after reasonable efforts have been made to obtain a special master, a special master is not available and would not be available within a reasonable period of time, the magistrate may direct the party seeking the order to conduct the search in the manner described in this section in lieu of the special master.

(e) Any search conducted pursuant to this section by a special master may be conducted in a manner that permits the party serving the warrant or his or her designee to accompany the special master as he or she conducts his or her search. However, that party or his or her designee shall not participate in the search nor shall he or she examine any of the items being searched by the special master except upon agreement of the party upon whom the warrant has been served.

(f) As used in this section, ''documentary evidence'' includes, but is not limited to, writings, documents, blueprints, drawings, photographs, computer printouts, microfilms, X-rays, files, diagrams, ledgers, books, tapes, audio and video recordings, films, or papers of any type or description.

(g) No warrant shall issue for any item or items described in Section 1070 of the Evidence Code.

(h) Notwithstanding any other law, no claim of attorney work product as described in Section 2018 of the Code of Civil Procedure shall be sustained where there is probable cause to believe that the lawyer is engaging or has engaged in criminal activity related to the documentary

evidence for which a warrant is requested unless it is established at the hearing with respect to the documentary evidence seized under the warrant that the services of the lawyer were not sought or obtained to enable or aid anyone to commit or plan to commit a crime or a fraud.

(i) Nothing in this section is intended to limit an attorney's ability to request an in camera hearing pursuant to the holding of the Supreme Court of California in People v. Superior Court (Laff) (2001) 25 Cal.4th 703.

SEC. 4. (a) Section 3.2 of this bill incorporates amendments to Section 1524 of the Penal Code proposed by both this bill and SB 1980. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2003, (2) each bill amends Section 1524 of the Penal Code, and (3) SB 1637 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after SB 1980, in which case Section 3 of this bill shall remain operative only until the operative date of SB 1980, at which time Section 3.2 shall become operative and Sections 3.4 and 3.6 of this bill shall not become operative.

(b) Section 3.4 of this bill incorporates amendments to Section 1524 of the Penal Code proposed by both this bill and SB 1637. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2003, (2) each bill amends Section 1524 of the Penal Code, (3) SB 1980 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after SB 1637, in which case Section 3 of this bill shall remain operative only until the operative date of SB 1637, at which time Section 3.4 of this bill shall become operative and Sections 3.2 and 3.6 of this bill shall not become operative.

(c) Section 3.6 of this bill incorporates amendments to Section 1524 of the Penal Code proposed by this bill, SB 1980, and SB 1637. It shall only become operative if (1) all three bills are enacted and become effective on or before January 1, 2003, (2) all three bills amend Section 1524 of the Penal Code, and (3) this bill is enacted after SB 1980 and SB 1637, in which case Section 3 of the bill shall remain operative only until the operative date of SB 1980 or SB 1637, whichever is later, at which time Section 3.6 of the bill shall become operative and Sections 3.2 and 3.4 of this bill shall not become operative.

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

In order to assist the prosecution of pending fraud cases, it is necessary that this act take effect immediately.

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CHAPTER 1060

An act relating to school sponsored athletic programs.

[Approved by Governor September 29, 2002. Filed with Secretary of State September 29, 2002.]

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

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

(a) The year 2002 marks the 30th anniversary of the enactment of Title IX of the Education Amendments of 1972 (20 U.S.C. Secs. 1681 et seq.), a federal statute that prohibits sex discrimination in schools and other educational programs receiving federal funds. Title IX applies to all aspects of educational opportunities, but is especially well known for its success in opening the door to athletics for women and girls.

(b) Title IX requires affected schools and programs to do the following: offer male and female students equal opportunities to play sports; treat male and female athletes fairly; and give male and female athletes their fair share of athletic scholarship money.

(c) Prior to the enactment of Title IX, only one in 27 girls participated in high school sports, compared to one in two boys.

(d) In 2000–01, 2,784,154 girls or 41.5 percent of the total number of participants and 3,921,069 boys or 58.5 percent of the total number of participants played high school sports in this country according to the National Federation of State High School Associations. In 1972, there were only 294,015 girls participating on athletic teams in the whole country.

(e) In California, there were 271,203 girls or 41.3 percent of the total number of participants and 386,037 boys or 58.7 percent of the total number of participants competing in interscholastic sports in 2000–01.

(f) At California's 103 community colleges with athletic programs, there were 7,623 female athletes or 36 percent of the total number of participants and 13,529 male athletes or 64 percent of the total number of participants in 2000–01 according to the Commission on Athletics.

(g) In 1972, there were only 31,852 women on athletic teams at the college level in the whole country. By 2002, that number had jumped to 146,617. In 1972, no women received athletic scholarships. By 2002, one hundred eighty million dollars ($180,000,000) was received by women athletes, according to the National Collegiate Athletic Association.

(h) An athletic program can be considered gender equitable when the participants in both the men's and women's sports programs would accept as fair and equitable the overall program of the other gender.

(i) The benefits of athletic activity for girls and women are irrefutable. High school girls who play sports are less likely to be involved in an unwanted pregnancy, may reduce a teenage girl's risk of breast cancer by 60 percent, and helps to strengthen bone mass, thereby reducing the risk of osteoporosis. Girls and women who play sports have higher levels of confidence, lower levels of depression, a more positive body image, and experience higher state of psychological well-being. Athletics also teaches girls and women teamwork, goal-setting, and the pursuit of excellence.

(j) While many educational institutions have made a conscientious effort to provide an athletic program that is equitable to both male and female students, others have not exhibited the same level of effort or have intentionally chosen to continue discriminatory practices.

(k) In late January 2002, the Orange County Register ran a series of articles following an extensive investigation of athletic equity issues at California's community colleges. Many areas of concern were brought to light in that series. In response, some colleges are taking their responsibilities regarding athletic equity much more seriously.

(*l*) While significant progress has been made since the passage of Title IX in 1972, the numbers indicate that female athletes are still not provided equal athletic opportunity at many high schools, colleges, and universities throughout the state. A survey report, pinpointing areas of weakness and recommending strategies to improve the various components of athletic equity, will allow California to assume a leadership role in compliance with this 30-year-old federal statute.

(m) As used in this act, ''Title IX'' refers to Title IX of the Education Amendments of 1972 (20 U.S.C. Secs. 1681 et seq.).

SEC. 2. (a) The State Department of Education and the California Postsecondary Education Commission jointly shall contract with an independent evaluator to prepare a report on interscholastic athletics in the state. This report shall include the findings of the independent evaluator relating to the percentage of participating women athletes, the percentage of funding, the percentage of scholarships, and the overall level of compliance with Title IX by educational institutions in this state, as well as the recommendations of the department and the commission with respect to improvement. This report shall be prepared in accordance with subdivision (b), and shall be submitted to the Legislature no later than January 1, 2004.

(b) (1) The report required by this section shall separately address the findings relative to interscholastic athletics in each of the following academic categories:

(A) Grades 7 and 8.

(B) Grades 9 to 12, inclusive.

(C) The campuses of the University of California.

(D) The campuses of the California State University.

(E) The campuses of the California Community Colleges.

(2) In preparing the report required by this section, the contracted independent evaluator shall study, but not necessarily be limited to, all of the following topics:

(A) Participation opportunities.

(B) Equal benefits and services, including, but not limited to, the following topics:

(i) Overall support.

(ii) Equipment and supplies.

(iii) Scheduling of games and practice teams.

(iv) Travel and related expenses.

(v) Availability of coaches and their compensation.

(vi) Locker rooms, practice, and competitive facilities.

(vii) Medical and training services.

(viii) Publicity.

(ix) Recruitment (particularly for higher education programs).

(x) Availability of tutors and their compensation (particularly for higher education programs).

(xi) Housing and dining facilities and services (particularly for higher education programs).

(C) Athletic scholarship money.

SEC. 3. (a) The implementation of Section 2 of this act is subject to the provision of funds for its purposes in the Budget Act of 2002 or in another statute enacted during the 2001–02 Regular Session.

(b) The total administrative costs incurred by the State Department of Education and the California Postsecondary Education Commission under this act shall not exceed 5 percent of the total funds available pursuant to subdivision (a).

CHAPTER 1061

An act to amend Sections 1950.5 and 1954 of the Civil Code, relating to landlord and tenant.

[Approved by Governor September 29, 2002. Filed with Secretary of State September 29, 2002.]

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

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

1950.5. (a) This section applies to security for a rental agreement for residential property that is used as the dwelling of the tenant.

(b) As used in this section, ''security'' means any payment, fee, deposit or charge, including, but not limited to, any payment, fee, deposit, or charge, except as provided in Section 1950.6, that is imposed at the beginning of the tenancy to be used to reimburse the landlord for costs associated with processing a new tenant or that is imposed as an advance payment of rent, used or to be used for any purpose, including, but not limited to, any of the following:

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

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

(3) The cleaning of the premises upon termination of the tenancy necessary to return the unit to the same level of cleanliness it was in at the inception of the tenancy. The amendments to this paragraph enacted by the act adding this sentence shall apply only to tenancies for which the tenant's right to occupy begins after January 1, 2003.

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

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

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

This subdivision does not preclude a landlord and a tenant from entering into a mutual agreement for the landlord, at the request of the tenant and for a specified fee or charge, to make structural, decorative, furnishing, or other similar alterations, if the alterations are other than cleaning or repairing for which the landlord may charge the previous tenant as provided by subdivision (e).

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

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

for the cumulative effects of ordinary wear and tear occurring during any one or more tenancies.

(f) (1) Within a reasonable time after notification of either party's intention to terminate the tenancy, or before the end of the lease term, the landlord shall notify the tenant in writing of his or her option to request an initial inspection and of his or her right to be present at the inspection. At a reasonable time, but no earlier than two weeks before the termination or the end of lease date, the landlord, or an agent of the landlord, shall, upon the request of the tenant, make an initial inspection of the premises prior to any final inspection the landlord makes after the tenant has vacated the premises. The purpose of the initial inspection shall be to allow the tenant an opportunity to remedy identified deficiencies, in a manner consistent with the rights and obligations of the parties under the rental agreement, in order to avoid deductions from the security. If a tenant chooses not to request an initial inspection, the duties of the landlord under this subdivision are discharged. If an inspection is requested, the parties shall attempt to schedule the inspection at a mutually acceptable date and time. The landlord shall give at least 48 hours prior written notice of the date and time of the inspection if either a mutual time is agreed upon, or if a mutually agreed time cannot be scheduled but the tenant still wishes an inspection. The tenant and landlord may agree to forgo the 48-hour prior written notice by both signing a written waiver. The landlord shall proceed with the inspection whether the tenant is present or not, unless the tenant previously withdrew his or her request for the inspection.

(2) Based on the inspection, the landlord shall give the tenant an itemized statement specifying repairs or cleaning that are proposed to be the basis of any deductions from the security the landlord intends to make pursuant to paragraphs (1) to (4), inclusive of subdivision (b). This statement shall also include the texts of subdivision (d) and paragraphs (1) to (4), inclusive, of subdivision (b). The statement shall be given to the tenant, if the tenant is present for the inspection, or shall be left inside the premises.

(3) The tenant shall have the opportunity during the period following the initial inspection until termination of the tenancy to remedy identified deficiencies, in a manner consistent with the rights and obligations of the parties under the rental agreement, in order to avoid deductions from the security.

(4) Nothing in this subdivision shall prevent a landlord from using the security for deductions itemized in the statement provided for in paragraph (2) that were not cured by the tenant so long as the deductions are for damages authorized by this section.

(5) Nothing in this subdivision shall prevent a landlord from using the security for any purpose specified in paragraphs (1) to (4), inclusive, of

subdivision (b) that occurs between completion of the initial inspection and termination of the tenancy or was not identified during the initial inspection due to the presence of a tenant's possessions.

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

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

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

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

(i) Prior to the voluntary transfer of a landlord's interest in the premises, the landlord shall deliver to the landlord's successor in interest a written statement indicating the following:

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

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

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

This subdivision does not affect the validity of title to the real property transferred in violation of this subdivision.

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

provided in paragraph (2) of subdivision (h) or provides the tenant with an accounting as provided in subdivision (g).

This subdivision does not preclude a successor in interest from recovering from the tenant compensatory damages that are in excess of the security received from the landlord previously paid by the tenant to the landlord.

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

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

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

(m) No lease or rental agreement may contain any provision characterizing any security as ''nonrefundable.''

(n) Any action under this section may be maintained in small claims court if the damages claimed, whether actual or statutory or both, are within the jurisdictional amount allowed by Section 116.220 of the Code of Civil Procedure.

(o) Proof of the existence of and the amount of a security deposit may be established by any credible evidence, including, but not limited to, a canceled check, a receipt, a lease indicating the requirement of a deposit as well as the amount, prior consistent statements or actions of the landlord or tenant, or a statement under penalty of perjury that satisfies the credibility requirements set forth in Section 780 of the Evidence Code.

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

SEC. 2. Section 1954 of the Civil Code is amended to read:

1954. A landlord may enter the dwelling unit only in the following cases:

(a) In case of emergency.

(b) To make necessary or agreed repairs, decorations, alterations or improvements, supply necessary or agreed services, or exhibit the dwelling unit to prospective or actual purchasers, mortgagees, tenants, workmen or contractors or to make an inspection pursuant to subdivision (f) of Section 1950.5.

(c) When the tenant has abandoned or surrendered the premises.

(d) Pursuant to court order.

Except in cases of emergency or when the tenant has abandoned or surrendered the premises, entry may not be made during other than normal business hours, unless the tenant consents at the time of entry.

The landlord shall not abuse the right of access or use it to harass the tenant. Except in cases of emergency, when the tenant has abandoned or surrendered the premises, or if it is impracticable to do so, the landlord shall give the tenant reasonable notice of his or her intent to enter and enter only during normal business hours. Twenty-four hours advanced notice shall be presumed to be reasonable notice in absence of evidence to the contrary.

SEC. 2.5. Section 1954 of the Civil Code is amended to read:

1954. A landlord may enter the dwelling unit only in the following cases:

(a) In case of emergency.

(b) To make necessary or agreed repairs, decorations, alterations or improvements, supply necessary or agreed services, or exhibit the dwelling unit to prospective or actual purchasers, mortgagees, tenants, workmen or contractors or to make an inspection pursuant to subdivision (f) of Section 1950.5.

(c) When the tenant has abandoned or surrendered the premises.

(d) Pursuant to court order.

Except in cases of emergency or when the tenant has abandoned or surrendered the premises, entry may not be made during other than normal business hours unless the tenant consents at the time of entry.

The landlord shall not abuse the right of access or use it to harass the tenant. Except in cases of emergency or when the tenant has abandoned or surrendered the premises, the landlord shall give the tenant reasonable notice in writing of his or her intent to enter and enter only during normal business hours. The notice may be personally delivered to the tenant, left with someone of a suitable age and discretion at the premises, or, left on, near, or under the usual entry door of the premises in a manner in which a reasonable person would discover the notice. Twenty-four hours shall be presumed to be reasonable notice in absence of evidence to the

contrary. The notice may be mailed to the tenant. Mailing of the notice at least six days prior to an intended entry is presumed reasonable notice in the absence of evidence to the contrary.

If the purpose of the entry is to exhibit the dwelling unit to prospective or actual purchasers, the notice may be given orally, in person or by telephone, if the landlord or his or her agent has notified the tenant in writing within 120 days of the oral notice that the property is for sale and that the landlord or agent may contact the tenant orally for the purpose described above. Twenty-four hours is presumed reasonable notice in the absence of evidence to the contrary. At the time of entry, the landlord or agent shall leave written evidence of the entry inside the unit.

SEC. 3. Section 2.5 of this bill incorporates amendments to Section 1954 of the Civil Code proposed by both this bill and SB 1403. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2003, (2) each bill amends Section 1954 of the Civil Code, and (3) this bill is enacted after SB 1403, in which case Section 2 of this bill shall not become operative.

CHAPTER 1062

An act to amend Sections 65583.1, 65852.2, and 65915 of the Government Code, relating to housing.

[Approved by Governor September 29, 2002. Filed with Secretary of State September 29, 2002.]

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

SECTION 1. Section 65583.1 of the Government Code is amended to read:

65583.1. (a) The Department of Housing and Community Development, in evaluating a proposed or adopted housing element for compliance with state law, may allow a city or county to identify adequate sites, as required pursuant to Section 65583, by a variety of methods, including, but not limited to, redesignation of property to a more intense land use category and increasing the density allowed within one or more categories. The department may also allow a city or county to identify sites for second units based on the number of second units developed in the prior housing element planning period whether or not the units are permitted by right, the need for these units in the community, the resources or incentives available for their development, and any other relevant factors, as determined by the department. Nothing in this section reduces the responsibility of a city or county to identify,

by income category, the total number of sites for residential development as required by this article.

(b) Sites that contain permanent housing units located on a military base undergoing closure or conversion as a result of action pursuant to the Defense Authorization Amendments and Base Closure and Realignment Act (Public Law 100-526), the Defense Base Closure and Realignment Act of 1990 (Public Law 101-510), or any subsequent act requiring the closure or conversion of a military base may be identified as an adequate site if the housing element demonstrates that the housing units will be available for occupancy by households within the planning period of the element. No sites containing housing units scheduled or planned for demolition or conversion to nonresidential uses shall qualify as an adequate site.

Any city, city and county, or county using this subdivision shall address the progress in meeting this section in the reports provided pursuant to paragraph (1) of subdivision (b) of Section 65400.

(c) (1) The Department of Housing and Community Development may allow a city or county to substitute the provision of units for up to 25 percent of the community's obligation to identify adequate sites for any income category in its housing element pursuant to paragraph (1) of subdivision (c) of Section 65583 if the community includes in its housing element a program committing the local government to provide units in that income category within the city or county that will be made available through the provision of committed assistance during the planning period covered by the element to low- and very low income households at affordable housing costs or affordable rents, as defined in Sections 50052.5 and 50053 of the Health and Safety Code, and which meet the requirements of paragraph (2). Except as otherwise provided in this subdivision, the community may substitute one dwelling unit for one dwelling unit site in the applicable income category. The program shall do all of the following:

(A) Identify the specific, existing sources of committed assistance and dedicate a specific portion of the funds from those sources to the provision of housing pursuant to this subdivision.

(B) Indicate the number of units that will be provided to both low- and very low income households and demonstrate that the amount of dedicated funds is sufficient to develop the units at affordable housing costs or affordable rents.

(C) Demonstrate that the units meet the requirements of paragraph (2).

(2) Only units that comply with subparagraph (A), (B), or (C) qualify for inclusion in the housing element program described in paragraph (1), as follows:

(A) Units that are to be substantially rehabilitated with committed assistance from the city or county and constitute a net increase in the community's stock of housing affordable to low- and very low income households. For purposes of this subparagraph, a unit is not eligible to be "substantially rehabilitated" unless all of the following requirements are met:

(i) At the time the unit is identified for substantial rehabilitation, (I) the local government has determined that the unit is at imminent risk of loss to the housing stock, (II) the local government has committed to provide relocation assistance pursuant to Chapter 16 (commencing with Section 7260) of Division 7 of Title 1 to any occupants temporarily or permanently displaced by the rehabilitation or code enforcement activity, (III) the local government requires that any displaced occupants will have the right to reoccupy the rehabilitated units, and (IV) the unit has been cited and found by the local code enforcement agency or a court to be unfit for human habitation and vacated or subject to being vacated because of the existence for not less than 120 days of four of the conditions listed in subdivisions (a) to (g), inclusive, of Section 17995.3 of the Health and Safety Code.

(ii) The rehabilitated unit will have long-term affordability covenants and restrictions that require the unit to be available to, and occupied by, persons or families of low- or very low income at affordable housing costs for at least 20 years or the time period required by any applicable federal or state law or regulation, except that if the period is less than 20 years, only one unit shall be credited as an identified adequate site for every three units rehabilitated pursuant to this section, and no credit shall be allowed for a unit required to remain affordable for less than 10 years.

(iii) Prior to initial occupancy after rehabilitation, the local code enforcement agency shall issue a certificate of occupancy indicating compliance with all applicable state and local building code and health and safety code requirements.

(B) Units that are located in a multifamily rental housing complex of 16 or more units, are converted with committed assistance from the city or county from nonaffordable to affordable by acquisition of the unit or the purchase of affordability covenants and restrictions for the unit, are not acquired by eminent domain, and constitute a net increase in the community's stock of housing affordable to low- and very low income households. For purposes of this subparagraph, a unit is not converted by acquisition or the purchase of affordability covenants unless all of the following occur:

(i) The unit is made available at a cost affordable to low- or very low income households.

(ii) At the time the unit is identified for acquisition, the unit is not available at a cost affordable to low- or very low income households.

(iii) At the time the unit is identified for acquisition the unit is not occupied by low- or very low income households.

(iv) The unit is in decent, safe, and sanitary condition at the time of occupancy.

(v) The acquisition price is not greater than 120 percent of the median price for housing units in the city or county.

(vi) The unit has long-term affordability covenants and restrictions that require the unit to be affordable to persons of low- or very low income for not less than 30 years.

(C) Units that will be preserved at affordable housing costs to persons or families of low- or very low incomes with committed assistance from the city or county by acquisition of the unit or the purchase of affordability covenants for the unit. For purposes of this subparagraph, a unit shall not be deemed preserved unless all of the following occur:

(i) The unit has long-term affordability covenants and restrictions that require the unit to be affordable to and reserved for occupancy by persons of the same or lower income group as the current occupants for a period of at least 40 years.

(ii) The unit is multifamily rental housing that receives governmental assistance under any of the following state and federal programs: Section 221(d)(3) of the National Housing Act (12 U.S.C. Sec. 1715*l*(d)(3) and (5)); Section 236 of the National Housing Act (12 U.S.C. Sec. 1715z-1); Section 202 of the Housing Act of 1959 (12 U.S.C. Sec. 1701q); for rent supplement assistance under Section 101 of the Housing and Urban Development Act of 1965, as amended (12 U.S.C. Sec. 1701s); under Section 515 of the Housing Act of 1949, as amended (42 U.S.C. Sec. 1485); and any new construction, substantial rehabilitation, moderate rehabilitation, property disposition, and loan management set-aside programs, or any other program providing project-based assistance, under Section 8 of the United States Housing Act of 1937, as amended (42 U.S.C. Sec. 1437f); any state and local multifamily revenue bond programs; local redevelopment programs; the federal Community Development Block Grant Program; and other local housing assistance programs or units that were used to qualify for a density bonus pursuant to Section 65916.

(iii) The city or county finds, after a public hearing, that the unit is eligible, and is reasonably expected, to change from housing affordable to low- and very low income households to any other use during the next five years due to termination of subsidy contracts, mortgage prepayment, or expiration of restrictions on use.

(iv) The unit is in decent, safe, and sanitary condition at the time of occupancy.

(v) At the time the unit is identified for preservation it is available at affordable cost to persons or families of low- or very low income.

(3) This subdivision does not apply to any city or county that, during the current or immediately prior planning period, as defined by Section 65588, has not met any of its share of the regional need for affordable housing, as defined in Section 65584, for low- and very low income households. A city or county shall document for any such housing unit that a building permit has been issued and all development and permit fees have been paid or the unit is eligible to be lawfully occupied.

(4) For purposes of this subdivision, ''committed assistance'' means that the city or county enters into a legally enforceable agreement during the first two years of the housing element planning period that obligates sufficient available funds to provide the assistance necessary to make the identified units affordable and that requires that the units be made available for occupancy within two years of the execution of the agreement. ''Committed assistance'' does not include tenant-based rental assistance.

(5) For purposes of this subdivision, ''net increase'' includes only housing units provided committed assistance pursuant to subparagraph (A) or (B) of paragraph (2) in the current planning period, as defined in Section 65588, that were not provided committed assistance in the immediately prior planning period.

(6) For purposes of this subdivision, ''the time the unit is identified'' means the earliest time when any city or county agent, acting on behalf of a public entity, has proposed in writing or has proposed orally or in writing to the property owner, that the unit be considered for substantial rehabilitation, acquisition, or preservation.

(7) On July 1 of the third year of the planning period, as defined by Section 65588, in the report required pursuant to Section 65400, each city or county that has included in its housing element a program to provide units pursuant to subparagraph (A), (B), or (C) of paragraph (2) shall report in writing to the legislative body, and to the department within 30 days of making its report to the legislative body, on its progress in providing units pursuant to this subdivision. The report shall identify the specific units for which committed assistance has been provided or which have been made available to low- and very low income households, and it shall adequately document how each unit complies with this subdivision. If, by July 1 of the third year of the planning period, the city or county has not entered into an enforceable agreement of committed assistance for all units specified in the programs adopted pursuant to subparagraph (A), (B), or (C) of paragraph (2), the city or county shall, not later than July 1 of the fourth year of the planning period, adopt an amended housing element in accordance with Section 65585, identifying additional adequate sites pursuant to paragraph (1) of subdivision (c) of Section 65583 sufficient to accommodate the number of units for which committed assistance was not provided. If a city or

county does not amend its housing element to identify adequate sites to address any shortfall, or fails to complete the rehabilitation, acquisition, purchase of affordability covenants, or the preservation of any housing unit within two years after committed assistance was provided to that unit, it shall be prohibited from identifying units pursuant to subparagraph (A), (B), or (C) of paragraph (2) in the housing element that it adopts for the next planning period, as defined in Section 65588, above the number of units actually provided or preserved due to committed assistance.

SEC. 2. Section 65852.2 of the Government Code is amended to read:

65852.2. (a) (1) Any local agency may, by ordinance, provide for the creation of second units in single-family and multifamily residential zones. The ordinance may do any of the following:

(A) Designate areas within the jurisdiction of the local agency where second units may be permitted. The designation of areas may be based on criteria, that may include, but are not limited to, the adequacy of water and sewer services and the impact of second units on traffic flow.

(B) Impose standards on second units that include, but are not limited to, parking, height, setback, lot coverage, architectural review, maximum size of a unit, and standards that prevent adverse impacts on any real property that is listed in the California Register of Historic Places.

(C) Provide that second units do not exceed the allowable density for the lot upon which the second unit is located, and that second units are a residential use that is consistent with the existing general plan and zoning designation for the lot.

(2) The ordinance shall not be considered in the application of any local ordinance, policy, or program to limit residential growth.

(3) When a local agency receives its first application on or after July 1, 2003, for a permit pursuant to this subdivision, the application shall be considered ministerially without discretionary review or a hearing, notwithstanding Section 65901 or 65906 or any local ordinance regulating the issuance of variances or special use permits. Nothing in this paragraph may be construed to require a local government to adopt or amend an ordinance for the creation of second units. A local agency may charge a fee to reimburse it for costs that it incurs as a result of amendments to this paragraph enacted during the 2001–02 Regular Session of the Legislature, including the costs of adopting or amending any ordinance that provides for the creation of second units.

(b) (1) When a local agency which has not adopted an ordinance governing second units in accordance with subdivision (a) or (c) receives its first application on or after July 1, 1983, for a permit pursuant to this subdivision, the local agency shall accept the application and approve or

disapprove the application ministerially without discretionary review pursuant to this subdivision unless it adopts an ordinance in accordance with subdivision (a) or (c) within 120 days after receiving the application. Notwithstanding Section 65901 or 65906, every local agency shall grant a variance or special use permit for the creation of a second unit if the second unit complies with all of the following:

(A) The unit is not intended for sale and may be rented.

(B) The lot is zoned for single-family or multifamily use.

(C) The lot contains an existing single-family dwelling.

(D) The second unit is either attached to the existing dwelling and located within the living area of the existing dwelling or detached from the existing dwelling and located on the same lot as the existing dwelling.

(E) The increased floor area of an attached second unit shall not exceed 30 percent of the existing living area.

(F) The total area of floorspace for a detached second unit shall not exceed 1,200 square feet.

(G) Requirements relating to height, setback, lot coverage, architectural review, site plan review, fees, charges, and other zoning requirements generally applicable to residential construction in the zone in which the property is located.

(H) Local building code requirements which apply to detached dwellings, as appropriate.

(I) Approval by the local health officer where a private sewage disposal system is being used, if required.

(2) No other local ordinance, policy, or regulation shall be the basis for the denial of a building permit or a use permit under this subdivision.

(3) This subdivision establishes the maximum standards that local agencies shall use to evaluate proposed second units on lots zoned for residential use which contain an existing single-family dwelling. No additional standards, other than those provided in this subdivision or subdivision (a), shall be utilized or imposed, except that a local agency may require an applicant for a permit issued pursuant to this subdivision to be an owner-occupant.

(4) No changes in zoning ordinances or other ordinances or any changes in the general plan shall be required to implement this subdivision. Any local agency may amend its zoning ordinance or general plan to incorporate the policies, procedures, or other provisions applicable to the creation of second units if these provisions are consistent with the limitations of this subdivision.

(5) A second unit which conforms to the requirements of this subdivision shall not be considered to exceed the allowable density for the lot upon which it is located, and shall be deemed to be a residential use which is consistent with the existing general plan and zoning

designations for the lot. The second units shall not be considered in the application of any local ordinance, policy, or program to limit residential growth.

(c) No local agency shall adopt an ordinance which totally precludes second units within single-family or multifamily zoned areas unless the ordinance contains findings acknowledging that the ordinance may limit housing opportunities of the region and further contains findings that specific adverse impacts on the public health, safety, and welfare that would result from allowing second units within single-family and multifamily zoned areas justify adopting the ordinance.

(d) A local agency may establish minimum and maximum unit size requirements for both attached and detached second units. No minimum or maximum size for a second unit, or size based upon a percentage of the existing dwelling, shall be established by ordinance for either attached or detached dwellings which does not permit at least an efficiency unit to be constructed in compliance with local development standards.

(e) Parking requirements for second units shall not exceed one parking space per unit or per bedroom. Additional parking may be required provided that a finding is made that the additional parking requirements are directly related to the use of the second unit and are consistent with existing neighborhood standards applicable to existing dwellings. Off-street parking shall be permitted in setback areas in locations determined by the local agency or through tandem parking, unless specific findings are made that parking in setback areas or tandem parking is not feasible based upon specific site or regional topographical or fire and life safety conditions, or that it is not permitted anywhere else in the jurisdiction.

(f) Fees charged for the construction of second units shall be determined in accordance with Chapter 5 (commencing with Section 66000).

(g) This section does not limit the authority of local agencies to adopt less restrictive requirements for the creation of second units.

(h) Local agencies shall submit a copy of the ordinances adopted pursuant to subdivision (a) or (c) to the Department of Housing and Community Development within 60 days after adoption.

(i) As used in this section, the following terms mean:

(1) ''Living area,'' means the interior habitable area of a dwelling unit including basements and attics but does not include a garage or any accessory structure.

(2) ''Local agency'' means a city, county, or city and county, whether general law or chartered.

(3) For purposes of this section, ''neighborhood'' has the same meaning as set forth in Section 65589.5.

(4) ''Second unit'' means an attached or a detached residential dwelling unit which provides complete independent living facilities for one or more persons. It shall include permanent provisions for living, sleeping, eating, cooking, and sanitation on the same parcel as the single-family dwelling is situated. A second unit also includes the following:

(A) An efficiency unit, as defined in Section 17958.1 of Health and Safety Code.

(B) A manufactured home, as defined in Section 18007 of the Health and Safety Code.

(j) Nothing in this section shall be construed to supersede or in any way alter or lessen the effect or application of the California Coastal Act (Division 20 (commencing with Section 30000) of the Public Resources Code), except that the local government shall not be required to hold public hearings for coastal development permit applications for second units.

SEC. 3. Section 65915 of the Government Code is amended to read:

65915. (a) When an applicant proposes a housing development within the jurisdiction of a city, county, or city and county, that local government shall provide the applicant incentives or concessions for the production of housing units as prescribed in this chapter. All cities, counties, or cities and counties shall adopt an ordinance that specifies how compliance with this section will be implemented.

(b) A city, county, or city and county shall either grant a density bonus and at least one of the concessions or incentives identified in subdivision (j), or provide other incentives or concessions of equivalent financial value based upon the land cost per dwelling unit, when the applicant for the housing development agrees or proposes to construct at least any one of the following:

(1) Twenty percent of the total units of a housing development for lower income households, as defined in Section 50079.5 of the Health and Safety Code.

(2) Ten percent of the total units of a housing development for very low income households, as defined in Section 50105 of the Health and Safety Code.

(3) Fifty percent of the total dwelling units of a housing development for qualifying residents, as defined in Section 51.3 of the Civil Code.

(4) Twenty percent of the total dwelling units in a condominium project as defined in subdivision (f) of Section 1351 of the Civil Code, for persons and families of moderate income, as defined in Section 50093 of the Health and Safety Code.

The city, county, or city and county shall grant the additional concession or incentive required by this subdivision unless the city, county, or city and county makes a written finding, based upon

substantial evidence, that the additional concession or incentive is not required in order to provide for affordable housing costs, as defined in Section 50052.5 of the Health and Safety Code, or for rents for the targeted units to be set as specified in subdivision (c).

(c) (1) An applicant shall agree to, and the city, county, or city and county shall ensure, continued affordability of all lower income density bonus units for 30 years or a longer period of time if required by the construction or mortgage financing assistance program, mortgage insurance program, or rental subsidy program. Those units targeted for lower income households, as defined in Section 50079.5 of the Health and Safety Code, shall be affordable at a rent that does not exceed 30 percent of 60 percent of area median income. Those units targeted for very low income households, as defined in Section 50105 of the Health and Safety Code, shall be affordable at a rent that does not exceed 30 percent of 50 percent of area median income.

(2) An applicant shall agree to, and the city, county, or city and county shall ensure, continued affordability of the moderate-income units that are directly related to the receipt of the density bonus for 10 years if the housing is in a condominium project as defined in subdivision (f) of Section 1351 of the Civil Code.

(d) An applicant may submit to a city, county, or city and county a proposal for the specific incentives or concessions that the applicant requests pursuant to this section, and may request a meeting with the city, county, or city and county. The city, county, or city and county shall grant the concession or incentive requested by the applicant unless the city, county, or city and county makes a written finding, based upon substantial evidence, of either of the following:

(1) The concession or incentive is not required in order to provide for affordable housing costs, as defined in Section 50052.5 of the Health and Safety Code, or for rents for the targeted units to be set as specified in subdivision (c).

(2) The concession or incentive would have a specific adverse impact, as defined in paragraph (2) of subdivision (d) of Section 65589.5, upon public health and safety or the physical environment or on any real property that is listed in the California Register of Historical Resources and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact without rendering the development unaffordable to low- and moderate-income households.

The applicant may initiate judicial proceedings if the city, county, or city and county refuses to grant a requested density bonus, incentive, or concession. If a court finds that the refusal to grant a requested density bonus, incentive, or concession is in violation of this section, the court shall award the plaintiff reasonable attorney's fees and costs of suit. Nothing in this subdivision shall be interpreted to require a local

government to grant an incentive or concession that has a specific, adverse impact, as defined in paragraph (2) of subdivision (d) of Section 65589.5, upon health, safety, or the physical environment, and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact. Nothing in this subdivision shall be interpreted to require a local government to grant an incentive or concession that would have an adverse impact on any real property that is listed in the California Register of Historical Resources. The city, county, or city and county shall establish procedures for carrying out this section, that shall include legislative body approval of the means of compliance with this section. The city, county, or city and county shall also establish procedures for waiving or modifying development and zoning standards that would otherwise inhibit the utilization of the density bonus on specific sites. These procedures shall include, but not be limited to, such items as minimum lot size, side yard setbacks, and placement of public works improvements.

(e) In no case may a city, county, or city and county apply any development standard that will have the effect of precluding the construction of a development meeting the criteria of subdivision (b) at the densities or with the concessions or incentives permitted by this section. An applicant may submit to a city, county, or city and county a proposal for the waiver or reduction of development standards and may request a meeting with the city, county, or city and county. If a court finds that the refusal to grant a waiver or reduction of development standards is in violation of this section, the court shall award the plaintiff reasonable attorney's fees and costs of suit. Nothing in this subdivision shall be interpreted to require a local government to waive or reduce development standards if the waiver or reduction would have a specific, adverse impact, as defined in paragraph (2) of subdivision (d) of Section 65589.5, upon health, safety, or the physical environment, and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact. Nothing in this subdivision shall be interpreted to require a local government to waive or reduce development standards that would have an adverse impact on any real property that is listed in the California Register of Historical Resources.

(f) The applicant shall show that the waiver or modification is necessary to make the housing units economically feasible.

(g) (1) For the purposes of this chapter, except as provided in paragraph (2), ''density bonus'' means a density increase of at least 25 percent, unless a lesser percentage is elected by the applicant, over the otherwise maximum allowable residential density under the applicable zoning ordinance and land use element of the general plan as of the date of application by the applicant to the city, county, or city and county. All density calculations resulting in fractional units shall be rounded up to

the next whole number. The granting of a density bonus shall not be interpreted, in and of itself, to require a general plan amendment, local coastal plan amendment, zoning change, or other discretionary approval. The density bonus shall not be included when determining the number of housing units which is equal to 10, 20, or 50 percent of the total. The density bonus shall apply to housing developments consisting of five or more dwelling units.

(2) For the purposes of this chapter, if a development does not meet the requirements of paragraph (1), (2), or (3) of subdivision (b), but the applicant agrees or proposes to construct a condominium project as defined in subdivision (f) of Section 1351 of the Civil Code, in which at least 20 percent of the total dwelling units are reserved for persons and families of moderate income, as defined in Section 50093 of the Health and Safety Code, a ''density bonus'' of at least 10 percent shall be granted, unless a lesser percentage is elected by the applicant, over the otherwise maximum allowable residential density under the applicable zoning ordinance and land use element of the general plan as of the date of application by the applicant to the city, county, or city and county. All density calculations resulting in fractional units shall be rounded up to the next whole number. The granting of a density bonus shall not be interpreted, in and of itself, to require a general plan amendment, local coastal plan amendment, zoning change, or other discretionary approval. The density bonus shall not be included when determining the number of housing units which is equal to 20 percent of the total. The density bonus shall apply to housing developments consisting of five or more dwelling units.

(h) ''Housing development,'' as used in this section, means one or more groups of projects for residential units constructed in the planned development of a city, county, or city and county. For the purposes of this section, ''housing development'' also includes either (1) a project to substantially rehabilitate and convert an existing commercial building to residential use, or (2) the substantial rehabilitation of an existing multifamily dwelling, as defined in subdivision (d) of Section 65863.4, where the result of the rehabilitation would be a net increase in available residential units. For the purpose of calculating a density bonus, the residential units do not have to be based upon individual subdivision maps or parcels. The density bonus shall be permitted in geographic areas of the housing development other than the areas where the units for the lower income households are located.

(i) The granting of a concession or incentive shall not be interpreted, in and of itself, to require a general plan amendment, local coastal plan amendment, zoning change, or other discretionary approval. This provision is declaratory of existing law.

(j) For the purposes of this chapter, concession or incentive means any of the following:

(1) A reduction in site development standards or a modification of zoning code requirements or architectural design requirements that exceed the minimum building standards approved by the California Building Standards Commission as provided in Part 2.5 (commencing with Section 18901) of Division 13 of the Health and Safety Code, including, but not limited to, a reduction in setback and square footage requirements and in the ratio of vehicular parking spaces that would otherwise be required.

(2) Approval of mixed use zoning in conjunction with the housing project if commercial, office, industrial, or other land uses will reduce the cost of the housing development and if the commercial, office, industrial, or other land uses are compatible with the housing project and the existing or planned development in the area where the proposed housing project will be located.

(3) Other regulatory incentives or concessions proposed by the developer or the city, county, or city and county that result in identifiable and actual cost reductions.

This subdivision does not limit or require the provision of direct financial incentives for the housing development, including the provision of publicly owned land, by the city, county, or city and county, or the waiver of fees or dedication requirements.

(k) If an applicant agrees to construct both 20 percent of the total units for lower income households and 10 percent of the total units for very low income households, the developer is entitled to only one density bonus and at least one additional concession or incentive identified in Section 65913.4 under this section although the city, city and county, or county may, at its discretion, grant more than one density bonus.

(*l*) Nothing in this section shall be construed to supersede or in any way alter or lessen the effect or application of the California Coastal Act (Division 20 (commencing with Section 30000) of the Public Resources Code).

(m) A local agency may charge a fee to reimburse it for costs it incurs as a result of amendments to this section enacted during the 2001–02 Regular Session of the Legislature.

(n) For purposes of this section, the following definitions shall apply:

(1) ''Development standard'' means any ordinance, general plan element, specific plan, charter amendment, or other local condition, law, policy, resolution, or regulation.

(2) ''Maximum allowable residential density'' means the density allowed under the zoning ordinance, or if a range of density is permitted, means the maximum allowable density for the specific zoning range applicable to the project.

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act, within the meaning of Section 17556 of the Government Code.

CHAPTER 1063

An act to amend Section 19549.14 of, and to add Section 19605.45 to, the Business and Professions Code, relating to satellite wagering, and making an appropriation therefor.

[Approved by Governor September 29, 2002. Filed with Secretary of State September 29, 2002.]

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

SECTION 1. Section 19549.14 of the Business and Professions Code is amended 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.

(c) If the racing association licensed in the year 2002 to conduct thoroughbred race meetings in San Mateo County is not licensed to conduct a horse racing meeting in that county in any subsequent year, the San Mateo County Fair may, subject to the approval of the board, conduct its racing dates at a facility operated by a thoroughbred racing association or fair licensed to conduct a meeting in the northern zone.

SEC. 2. Section 19605.45 is added to the Business and Professions Code, to read:

19605.45. (a) Notwithstanding Section 19605, 19605.1, 19605.35, or any other provision of this chapter, if the racing association licensed in the year 2002 to conduct thoroughbred race meetings in San Mateo County is not licensed to conduct a horse racing meeting in that county in any subsequent year, the board may authorize satellite wagering in San Mateo County only as provided in this section:

(1) The board may authorize a satellite wagering facility to be located either on the fairgrounds of the San Mateo County Fair or on leased premises within the City of San Mateo. The facility may be operated by the fair or the fair may contract for the operation and management of that satellite wagering facility with an individual racing association or fair, or a partnership, joint venture, or other affiliation of two or more racing associations or fairs. The board may license a facility to the San Mateo County Fair pursuant to this section notwithstanding the mileage restrictions contained in Section 19605 or any other provision of this chapter to the contrary.

(2) Satellite wagering facilities licensed to the fair pursuant to this section are subject to the provisions of subdivisions (a) to (e), inclusive, of Section 19605.3, except that they shall not be subject to the provisions of paragraph (3) of subdivision (a) of Section 19605.3 or any other impact fee or charge.

(3) Distributions pursuant to subdivision (d) of Section 19605.7, and Sections 19610.3 and 19610.4 made by a satellite wagering facility licensed to the fair pursuant to this section shall be to the same beneficiary that received those distributions in the year 2002 from the San Mateo County Fair and the racing association licensed in the year 2002 to conduct thoroughbred race meetings in San Mateo County.

CHAPTER 1064

An act to add and repeal Section 11174.4 of the Penal Code, relating to child abuse.

[Approved by Governor September 29, 2002. Filed with Secretary of State September 29, 2002.]

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

SECTION 1. Section 11174.4 is added to the Penal Code, to read:

11174.4. (a) There is hereby created the Child Abuse and Neglect Reporting Act Task Force for the purpose of reviewing the act and addressing the following:

(1) The value of the Child Abuse Central Index in protecting children.

(2) Changes needed with respect to the Child Abuse and Neglect Reporting Act, including but not limited to, the operation of the Child Abuse Central Index.

(b) The task force shall be chaired by a designee of the Attorney General.

(c) The members of the task force shall serve at the pleasure of their respective appointing authority, without compensation, except for reimbursement of necessary expenses. The task force shall be composed of the following representatives:

(1) One representative of the Department of Justice, in addition to the chairperson.

(2) One representative of the State Department of Social Services.

(3) One representative of the County Welfare Directors' Association.

(4) One representative of the California State Child Death Review Council.

(5) Two representatives of local law enforcement, one selected by the California State Sheriffs' Association and one selected by the California Police Chiefs' Association.

(6) One representative of the Judicial Council.

(7) Two representatives of the State Bar of California, one of whom practices criminal defense and one of whom represents children in criminal and civil proceedings.

(8) Two representatives of recognized organizations involved in privacy advocacy, civil liberties advocacy, or legal aid, one of whom is appointed by the Speaker of the Assembly and one of whom is appointed by the Senate Committee on Rules.

(9) Two members of the public, one of whom is appointed by the Speaker of the Assembly and one of whom is appointed by the Senate Committee on Rules.

(10) Two representatives appointed by the Governor.

(d) The Department of Justice shall provide staff and support for the task force.

(e) The task force shall meet at least once every two months. Subcommittees may be formed and meet as necessary. All meetings shall be open to the public.

(f) On or before January 1, 2004, the task force shall report its findings and recommendations to the Governor, the Attorney General, the Speaker of the Assembly, and the Senate Committee on Rules. At the request of any member, the report may include minority findings and recommendations.

(g) This section shall become inoperative on March 1, 2004, and is repealed as of January 1, 2005, unless a later enacted statute, that becomes operative before January 1, 2005, deletes or extends that date.

CHAPTER 1065

An act to amend Sections 18551.1 and 18611 of the Health and Safety Code, relating to mobilehomes.

[Approved by Governor September 29, 2002. Filed with Secretary of State September 29, 2002.]

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

SECTION 1. Section 18551.1 of the Health and Safety Code is amended to read:

18551.1. (a) Any mobilehome park, constructed on or after January 1, 1982, may be constructed in a manner that will enable manufactured homes, mobilehomes, and multiunit manufactured housing sited in the park to be placed upon a foundation system, and manufactured homes, mobilehomes, and multiunit manufactured housing sited in the park may be placed upon foundation systems, subject to the requirements of Section 18551.

(b) Notwithstanding subdivision (a), any manufactured home, mobilehome, or multiunit manufactured housing originally sited on or after January 1, 1985, in a mobilehome park constructed prior to January 1, 1982, may be placed upon a foundation system, subject to the requirements of Section 18551.

(c) Notwithstanding subdivisions (a) and (b), any manufactured home, mobilehome, or multiunit manufactured housing sited in a mobilehome park which is converted, or in the process of being converted, to resident ownership on or after January 1, 1992, may be placed on a foundation system, subject to the requirements of Section 18551, and with the approval of the ownership of the park.

(d) With respect to any manufactured home, mobilehome, or multiunit manufactured home sited in a mobilehome park under subdivision (a), (b), or (c), no single structure shall exceed two stories in height.

(e) Notwithstanding subdivisions (a) and (b), the installation of a manufactured home, mobilehome, or multiunit manufactured housing within a mobilehome park pursuant to Section 18551 shall be subject to prior written approval by the ownership of the mobilehome park.

(f) The number of dwelling units per structure for any manufactured home or mobilehome consisting of two or more dwelling units, or multiunit manufactured housing, sited in a mobilehome park on or after January 1, 2003, shall conform to a zone designation or conditional use permit that currently applies to the park or an amended or new zone designation or conditional use permit that is additionally granted to the park.

SEC. 2. Section 18611 of the Health and Safety Code is amended to read:

18611. (a) Factory-built housing bearing an insignia of approval pursuant to Section 19980, manufactured homes as defined in Section 18007, mobilehomes as defined in Section 18008, or multiunit manufactured housing as defined in Section 18008.7 may be affixed to a foundation system within a mobilehome park, if the installation conforms to the rules of the mobilehome park, the installation is approved pursuant to Section 19992, or in the case of manufactured homes, mobilehomes, or multiunit manufactured housing the installation is in accordance with Section 18551, and no single structure exceeds two stories in height. Any factory-built housing, manufactured homes, mobilehomes, or multiunit manufactured housing included in a mobilehome park pursuant to this section shall be located on lots especially designated for that purpose in accordance with the rules of the mobilehome park.

(b) This section applies only to mobilehome parks (1) where the permit to construct the park is issued on or after January 1, 1982, and (2) that are additionally granted a zone designation or conditional use permit that authorizes permanent occupancies of the type and to the extent established pursuant to this section.

(c) Nothing in this section shall be construed to create an exemption from the requirements of Division 2 (commencing with Section 66410) of Title 7 of the Government Code.

CHAPTER 1066

An act to add and repeal Section 67385.3 of the Education Code, relating to postsecondary education, and making an appropriation therefor.

[Approved by Governor September 29, 2002. Filed with Secretary of State September 29, 2002.]

I am signing Assembly Bill 2583.

This bill would establish the California Campus Sexual Assault Task Force to develop a uniform system for gathering information pertaining to campus sex crimes and to create a set of model guidelines for addressing these crimes on higher education campuses. The 15-member task force would be required to present a report to the Legislature by April 1, 2004. The bill also appropriates $125,000 to the Office of Criminal Justice Planning (OCJP).

Addressing campus sex crimes is a worthwhile endeavor.

This bill appropriates $125,000 General Fund at a time when the State is experiencing a severe revenue shortfall. Therefore, I am deleting the funding and directing OCJP to absorb the costs of the task force from within existing resources.

GRAY DAVIS, Governor

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

SECTION 1. Section 67385.3 is added to the Education Code, to read:

67385.3. (a) (1) The California Campus Sexual Assault Task Force is hereby established to assess the status of California's college and university campuses with respect to the incidence of sexual assault. The task force shall have the mission and responsibility to accomplish both of the following:

(A) Develop a uniform system for the gathering of information pertaining to sexual assault required by paragraph (1) of subdivision (c) from California institutions of higher education.

(B) Create a set of model guidelines for addressing sexual assault issues in institutions of higher education in the State of California.

(2) The task force shall consider the data collected pursuant to its responsibilities, and create a ''Campus Blueprint to Address Sexual Assault,'' and present that report in writing to the Legislature on or before April 1, 2004.

(b) The task force shall have 15 members.

(1) The following 14 members of the task force shall be appointed by the Governor:

(A) A representative of the University of California.

(B) A representative of the California State University.

(C) Two representatives of the California Community Colleges.

(D) A representative of the Sexual Assault Branch of the Office of Criminal Justice Planning.

(E) Two representatives of private institutions of higher education.

(F) Two at-large representatives of the public.

(G) Two representatives of rape crisis centers in the state.

(H) Two representatives of campus-based sexual assault programs in the state.

(I) A representative of the State Department of Health Services.

(2) One member of the task force shall be a representative of the Attorney General's office, appointed by the Attorney General.

(c) (1) The task force shall be staffed by the entity selected and contracted with pursuant to subdivision (e), and shall gather information pertinent to the report referenced in subdivision (a) from the various campuses of the University of California, the California State University, and the California Community Colleges, and from a sample of private institutions of higher education in the state. This information shall include, but not be limited to, information related to all of the following:

(A) Campus law enforcement policies that address sexual assault.

(B) Campus law enforcement preparation regarding sexual assault issues.

(C) Campus health prevention policies that address sexual assault.

(D) Faculty and employee education on sexual assault issues.

(E) Sexual assault prevention education programs for students.

(F) Victim-sensitive campus judicial policies addressing sexual assault.

(G) Compliance with, and policies regarding, the federal Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (20 U.S.C. 1092(f)).

(2) The information gathered pursuant to this subdivision shall not include information the disclosure of which is exempted or prohibited pursuant to federal or state law, including, but not limited to, the provisions of the Evidence Code relating to privilege.

(3) The task force shall conduct public hearings, which shall provide opportunities for receiving input, regarding the proposed guidelines, from concerned stakeholders.

(d) The Office of Criminal Justice Planning shall administer the task force, and shall support the task force in producing the report referenced in subdivision (a).

(e) The Office of Criminal Justice Planning shall administer a competitive bidding process for the selection of an entity to perform research, for the report referenced in subdivision (a). The Office of Criminal Justice Planning is hereby authorized to enter into an agreement with the entity that is selected under this subdivision for the provision of these services.

(f) 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. The sum of one hundred twenty-five thousand dollars ($125,000) is appropriated from the General Fund to the Office of Criminal Justice Planning for expenditure for the support of the task force until December 31, 2004, and for the other purposes of Section 1 of this act.

CHAPTER 1067

An act to amend Section 41841.6 of the Education Code, relating to public schools.

[Approved by Governor September 29, 2002. Filed with Secretary of State September 29, 2002.]

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

SECTION 1. The Legislature finds and declares that jail education contributes to the public safety by providing inmates with the skills and knowledge needed to succeed upon release. The Legislature also finds and declares that the existing method of funding jail education has contributed to the decline in enrollments in jail education programs. The intent of this measure is to establish a funding mechanism that does not result in reduced enrollments due to the attendance fluctuations that are inherent in operating education programs within the jail system.

SEC. 2. Section 41841.6 of the Education Code is amended to read:

41841.6. (a) Except as otherwise provided in subdivision (b) of Section 46191, for the 2000–01 fiscal year for purposes of Sections 1909 and 41841.5, in calculating the average daily attendance for schools or classes for adults in correctional facilities, a school district or county board of education may not claim or report any increase in average daily attendance in excess of the average daily attendance claimed and authorized pursuant to this article during the previous fiscal year multiplied by a factor of 1.025 to 1.14, as specified as follows:

(1) A school district or county office of education that has not experienced a loss of average daily attendance due to extenuating circumstances may not claim or report an increase in average daily attendance in excess of that authorized pursuant to this article during the previous fiscal year multiplied by 1.025.

(2) A school district that experienced a loss of units of average daily attendance due to extenuating circumstances may not claim or report an increase in average daily attendance in excess of that authorized pursuant to this article during the previous fiscal year multiplied by a factor equivalent to the number derived by adding 1.025 to the extenuating circumstances factor, as defined pursuant to paragraph (3).

(3) For purposes of this section, ''a school district or county office of education that experienced a loss of average daily attendance due to extenuating circumstances'' means a school district or county office of education that experienced a loss of average daily attendance as a result of the temporary or permanent closure of jails, a jail, or a unit thereof, that occurred on or after June 30, 1993, at which the district or office provided jail education programs that were subject to reimbursement by the state.

(4) For purposes of paragraph (2), ''extenuating circumstances factor'' means that number derived by dividing the number of units of average daily attendance lost to circumstances defined in paragraph (3) divided by the number of units of average daily attendance claimed in the fiscal year prior to the extenuating circumstances occurring, provided that the factor does not exceed 0.115.

(5) Any school district or county office of education claiming additional average daily attendance pursuant to the ''extenuating circumstances factor'' defined in paragraph (4) shall document the extenuating circumstances and the data involved in calculating their extenuating circumstances factor. This subdivision shall apply only to average daily attendance generated in the 2000–01 fiscal year.

(b) Except as otherwise provided in subdivision (b) of Section 46191, commencing with the 2001-02 fiscal year, and for each fiscal year thereafter, for purposes of Sections 1909 and 41841.5, in calculating the average daily attendance for schools or classes for adults in correctional facilities, a school district or county board of education may not claim or report any increase in average daily attendance in excess of the average daily attendance authorized pursuant to this article during the previous fiscal year multiplied by 1.025, unless the Legislature approves a greater increase for that fiscal year in the annual Budget Act.

(c) Notwithstanding subdivision (b), for the 2003–04 fiscal year, and each fiscal year thereafter, a school district or county office of education shall calculate the maximum average daily attendance it may claim for schools and classes for adults in correctional facilities for the then-current fiscal year by multiplying the maximum average daily attendance that it would have been authorized to claim for those programs, without regard to actual average daily attendance, for the immediately preceding fiscal year by 1.025, or a greater increase if approved by the Legislature for that fiscal year in the annual Budget Act or other measure.

(d) It is the intent of the Legislature to provide, through subsequent measures, additional adjustments to increase allocations for adults in correctional facility educational programs to the extent that funds are available.

(e) No state funds shall be allocated to a school district or county board of education for units of average daily attendance for programs set forth in this section unless the allocations are in compliance with this section.

CHAPTER 1068

An act to amend Sections 2020, 2025, and 2025.5 of the Code of Civil Procedure, relating to depositions.

[Approved by Governor September 29, 2002. Filed with Secretary of State September 29, 2002.]

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

SECTION 1. Section 2020 of the Code of Civil Procedure is amended to read:

2020. (a) The method for obtaining discovery within the state from one who is not a party to the action is an oral deposition under Section 2025, a written deposition under Section 2028, or a deposition for production of business records and things under subdivisions (d) and (e). Except as provided in paragraph (1) of subdivision (h) of Section 2025, the process by which a nonparty is required to provide discovery is a deposition subpoena. The deposition subpoena may command any of the following:

(1) Only the attendance and the testimony of the deponent, under subdivision (c).

(2) Only the production of business records for copying, under subdivision (d).

(3) Both the attendance and the testimony of the deponent, as well as the production of business records, other documents, and tangible things, under subdivision (e).

Except as modified in this section, the provisions of Chapter 2 (commencing with Section 1985), and of Article 4 (commencing with Section 1560) of Chapter 2 of Division 11 of the Evidence Code, apply to a deposition subpoena.

(b) The clerk of the court in which the action is pending shall issue a deposition subpoena signed and sealed, but otherwise in blank, to a party requesting it, who shall fill it in before service. In lieu of the court-issued deposition subpoena, an attorney of record for any party may sign and issue a deposition subpoena; the deposition subpoena in that case need not be sealed, a copy may be served on the nonparty, and the attorney may retain the original.

(c) A deposition subpoena that commands only the attendance and the testimony of the deponent shall specify the time when and the place where the deponent is commanded to attend for the deposition. It shall set forth a summary of (1) the nature of a deposition, (2) the rights and duties of the deponent, and (3) the penalties for disobedience of a deposition subpoena described in subdivision (h). If the deposition will be recorded using audio or video technology by, or at the direction of, the noticing party under paragraph (2) of subdivision (*l*) of Section 2025, the deposition subpoena shall state that it will be recorded in that manner. If the deposition testimony will be conducted using instant visual display, the deposition subpoena shall state that it will be conducted in that manner. If the deponent is an organization, the deposition subpoena shall describe with reasonable particularity the matters on which examination is requested, and shall advise that organization of its duty

to make the designation of employees or agents who will attend described in subdivision (d) of Section 2025.

(d) (1) A deposition subpoena that commands only the production of business records for copying shall designate the business records to be produced either by specifically describing each individual item or by reasonably particularizing each category of item; however, specific information identifiable only to the deponent's records system, such as a policy number or the date the consumer interacted with the witness, shall not be required. This deposition subpoena need not be accompanied by an affidavit or declaration showing good cause for the production of the business records designated in it. It shall be directed to the custodian of those records or another person qualified to certify the records. It shall command compliance in accordance with paragraph (4) on a date that is no earlier than 20 days after the issuance, or 15 days after the service, of the deposition subpoena, whichever date is later.

(2) If, under Section 1985.3 or 1985.6, the one to whom the deposition subpoena is directed is a witness, and the business records described in the deposition subpoena are personal records pertaining to a consumer, the service of the deposition subpoena shall be accompanied either by a copy of the proof of service of the notice to the consumer described in subdivision (e) of Section 1985.3, or subdivision (b) of Section 1985.6, as applicable, or by the consumer's written authorization to release personal records described in paragraph (2) of subdivision (c) of Section 1985.3, or paragraph (2) of subdivision (c) of Section 1985.6, as applicable.

(3) The officer for a deposition seeking discovery only of business records for copying under this subdivision shall be a professional photocopier registered under Chapter 20 (commencing with Section 22450) of Division 8 of the Business and Professions Code, or a person exempted from the registration requirements of that chapter under Section 22451 of the Business and Professions Code. This deposition officer shall not be financially interested in the action, or a relative or employee of any attorney of the parties. Any objection to the qualifications of the deposition officer is waived unless made before the date of production or as soon thereafter as the ground for that objection becomes known or could be discovered by reasonable diligence.

(4) Unless directed to make the records available for inspection or copying by the subpoenaing party's attorney or a representative of that attorney at the witness' business address under subdivision (e) of Section 1560 of the Evidence Code, the custodian of the records or other qualified person shall, in person, by messenger, or by mail, deliver only to the deposition officer specified in the deposition subpoena (1) a true, legible, and durable copy of the records, and (2) an affidavit in compliance with Section 1561 of the Evidence Code. If this delivery is

made to the office of the deposition officer, the records shall be enclosed, sealed, and directed as described in subdivision (c) of Section 1560 of the Evidence Code. If this delivery is made at the office of the business whose records are the subject of the deposition subpoena, the custodian of those records or other qualified person shall (1) permit the deposition officer specified in the deposition subpoena to make a copy of the originals of the designated business records during normal business hours as defined in subdivision (e) of Section 1560 of the Evidence Code, or (2) deliver to that deposition officer a true, legible, and durable copy of the records on receipt of payment in cash or by check, by or on behalf of the party serving the deposition subpoena, of the reasonable costs of preparing that copy, and an itemized statement for the cost of preparation, as determined under subdivision (b) of Section 1563 of the Evidence Code. This copy need not be delivered in a sealed envelope. Unless the parties, and if the records are those of a consumer as defined in Section 1985.3 or 1985.6, the consumer, stipulate to an earlier date, the custodian of the records shall not deliver to the deposition officer the records that are the subject of the deposition subpoena prior to the date and time specified in the deposition subpoena. The following legend shall appear in boldface type on the deposition subpoena immediately following the date and time specified for production: ''Do not release the requested records to the deposition officer prior to the date and time stated above.''

(5) Promptly on or after the deposition date and after the receipt or the making of a copy of business records under this subdivision, the deposition officer shall provide that copy to the party at whose instance the deposition subpoena was served, and a copy of those records to any other party to the action who then or subsequently, within a period of six months following the settlement of the case, notifies the deposition officer that the party desires to purchase a copy of those records.

(6) The provisions of Section 1562 of the Evidence Code concerning the admissibility of the affidavit of the custodian or other qualified person apply to a deposition subpoena served under this subdivision.

(e) A deposition subpoena that commands both the attendance and the testimony of the deponent, as well as the production of business records, documents, and tangible things, shall (1) comply with the requirements of subdivision (c), (2) designate the business records, documents, and tangible things to be produced either by specifically describing each individual item or by reasonably particularizing each category of item, and (3) specify any testing or sampling that is being sought. This deposition subpoena need not be accompanied by an affidavit or declaration showing good cause for the production of the documents and things designated.

Where, as described in Section 1985.3, the person to whom the deposition subpoena is directed is a witness, and the business records described in the deposition subpoena are personal records pertaining to a consumer, the service of the deposition subpoena shall be accompanied either by a copy of the proof of service of the notice to the consumer described in subdivision (e) of Section 1985.3, or by the consumer's written authorization to release personal records described in paragraph (2) of subdivision (c) of Section 1985.3.

(f) Subject to paragraph (1) of subdivision (d), service of a deposition subpoena shall be effected a sufficient time in advance of the deposition to provide the deponent a reasonable opportunity to locate and produce any designated business records, documents, and tangible things, as described in subdivision (d), and, where personal attendance is commanded, a reasonable time to travel to the place of deposition. Any person may serve the subpoena by personal delivery of a copy of it (1) if the deponent is a natural person, to that person, and (2) if the deponent is an organization, to any officer, director, custodian of records, or to any agent or employee authorized by the organization to accept service of a subpoena.

If a deposition subpoena requires the personal attendance of the deponent, under subdivision (c) or (e), the party noticing the deposition shall pay to the deponent in cash or by check the same witness fee and mileage required by Chapter 1 (commencing with Section 68070) of Title 8 of the Government Code for attendance and testimony before the court in which the action is pending. This payment, whether or not demanded by the deponent, shall be made, at the option of the party noticing the deposition, either at the time of service of the deposition subpoena, or at the time the deponent attends for the taking of testimony.

Service of a deposition subpoena that does not require the personal attendance of a custodian of records or other qualified person, under subdivision (d), shall be accompanied, whether or not demanded by the deponent, by a payment in cash or by check of the witness fee required by paragraph (6) of subdivision (b) of Section 1563 of the Evidence Code.

(g) Personal service of any deposition subpoena is effective to require of any deponent who is a resident of California at the time of service (1) personal attendance and testimony, if the subpoena so specifies, (2) any specified production, inspection, testing, and sampling, and (3) the deponent's attendance at a court session to consider any issue arising out of the deponent's refusal to be sworn, or to answer any question, or to produce specified items, or to permit inspection or photocopying, if the subpoena so specifies, or specified testing and sampling of the items produced.

(h) A deponent who disobeys a deposition subpoena in any manner described in subdivision (g) may be punished for contempt under Section 2023 without the necessity of a prior order of court directing compliance by the witness, and is subject to the forfeiture and the payment of damages set forth in Section 1992.

SEC. 2. Section 2025 of the Code of Civil Procedure is amended to read:

2025. (a) Any party may obtain discovery within the scope delimited by Section 2017, and subject to the restrictions set forth in Section 2019, by taking in California the oral deposition of any person, including any party to the action. The person deposed may be a natural person, an organization such as a public or private corporation, a partnership, an association, or a governmental agency.

(b) Subject to subdivisions (f) and (t), an oral deposition may be taken as follows:

(1) The defendant may serve a deposition notice without leave of court at any time after that defendant has been served or has appeared in the action, whichever occurs first.

(2) The plaintiff may serve a deposition notice without leave of court on any date that is 20 days after the service of the summons on, or appearance by, any defendant. However, on motion with or without notice, the court, for good cause shown, may grant to a plaintiff leave to serve a deposition notice on an earlier date.

(c) A party desiring to take the oral deposition of any person shall give notice in writing in the manner set forth in subdivision (d). However, where under subdivision (d) of Section 2020 only the production by a nonparty of business records for copying is desired, a copy of the deposition subpoena shall serve as the notice of deposition. The notice of deposition shall be given to every other party who has appeared in the action. The deposition notice, or the accompanying proof of service, shall list all the parties or attorneys for parties on whom it is served.

Where, as defined in subdivision (a) of Section 1985.3, the party giving notice of the deposition is a subpoenaing party, and the deponent is a witness commanded by a deposition subpoena to produce personal records of a consumer, the subpoenaing party shall serve on that consumer (1) a notice of the deposition, (2) the notice of privacy rights specified in subdivision (e) of Section 1985.3 and in Section 1985.6, and (3) a copy of the deposition subpoena.

(d) The deposition notice shall state all of the following:

(1) The address where the deposition will be taken.

(2) The date of the deposition, selected under subdivision (f), and the time it will commence.

(3) The name of each deponent, and the address and telephone number, if known, of any deponent who is not a party to the action. If

the name of the deponent is not known, the deposition notice shall set forth instead a general description sufficient to identify the person or particular class to which the person belongs.

(4) The specification with reasonable particularity of any materials or category of materials to be produced by the deponent.

(5) Any intention by the party noticing the deposition to record the testimony by audio or video technology, 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. If the deposition will be conducted using instant visual display, 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. Any party or attorney requesting the provision of the instant visual display of the testimony, or rough draft transcripts, shall pay the reasonable cost of those services, which may be no greater than the costs charged to any other party or attorney.

(6) Any intention to reserve the right to use at trial a video recording of the deposition testimony of a treating or consulting physician or of any expert witness under paragraph (4) of subdivision (u). In this event, the operator of the video 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 a 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 shall 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 video recording of the deposition testimony 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 audio or video technology if the notice of deposition stated an intention also to record the testimony by either of those methods, or if all the parties agree that the testimony may also be recorded by either of those methods. Any other party, at that party's expense, may make a simultaneous audio or video 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 make an audio or video record of the deposition testimony on the party or attorney who noticed the deposition, on all other parties or attorneys on whom the deposition notice was served under subdivision (c), and on any deponent whose attendance is being compelled by a deposition subpoena under Section 2020. If this notice is given three calendar days before the deposition date, it shall be made by personal service under

Section 1011. Examination and cross-examination of the deponent shall proceed as permitted at trial under the provisions of the Evidence Code.

(2) If the deposition is being recorded by means of audio or video technology by, or at the direction of, any party, the following procedure shall be observed:

(A) The area used for recording the deponent's oral testimony shall be suitably large, adequately lighted, and reasonably quiet.

(B) The operator of the recording equipment shall be competent to set up, operate, and monitor the equipment in the manner prescribed in this subdivision. The operator may be an employee of the attorney taking the deposition unless the operator is also the deposition officer. However, if a video recording 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 audio recording that includes the operator's name and business address, the name and business address of the operator's employer, the date, time, and place of the deposition, the caption of the case, the name of the deponent, a specification of the party on whose behalf the deposition is being taken, and any stipulations by the parties.

(E) Counsel for the parties shall identify themselves on camera or on the audio recording.

(F) The oath shall be administered to the deponent on camera or on the audio recording.

(G) If the length of a deposition requires the use of more than one unit of tape or electronic storage, the end of each unit and the beginning of each succeeding unit shall be announced on camera or on the audio recording.

(H) At the conclusion of a deposition, a statement shall be made on camera or on the audio recording 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 audio or video 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 recording. Objections to all or part of the deposition shall be made in writing. The court may permit further designations of testimony and objections as justice may require. With respect to those portions of an audio or video record of deposition testimony 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 recording be prepared for use at the trial or hearing. The original audio or video record 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 may not suspend the taking of testimony without the stipulation of all parties present unless any party attending the deposition, including the deponent, demands that the deposition officer suspend taking the testimony to enable that party or deponent to move for a protective order on the ground that the examination is being conducted in bad faith or in a manner that unreasonably annoys, embarrasses, or oppresses that deponent or party. This motion shall be accompanied by a declaration stating facts showing a reasonable and good faith attempt at an informal resolution of each issue presented by the motion. The court, for good cause shown, may terminate the examination or may limit the scope and manner of taking the deposition as provided in subdivision (i). If the order terminates the examination, the deposition shall not thereafter be resumed, except on order of the court.

The court shall impose a monetary sanction under Section 2023 against any party, person, or attorney who unsuccessfully makes or opposes a motion for this protective order, unless it finds that the one

subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

(o) If a deponent fails to answer any question or to produce any document or tangible thing under the deponent's control that is specified in the deposition notice or a deposition subpoena, the party seeking discovery may move the court for an order compelling that answer or production. This motion shall be made no later than 60 days after the completion of the record of the deposition, and shall be accompanied by a declaration stating facts showing a reasonable and good faith attempt at an informal resolution of each issue presented by the motion. Notice of this motion shall be given to all parties, and to the deponent either orally at the examination, or by subsequent service in writing. If the notice of the motion is given orally, the deposition officer shall direct the deponent to attend a session of the court at the time specified in the notice. Not less than five days prior to the hearing on this motion, the moving party shall lodge with the court a certified copy of any parts of the stenographic transcript of the deposition that are relevant to the motion. If a deposition is recorded by audio or video technology, 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 or the deponent, at the expense of the

party or deponent, 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 full or partial transcript 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 audio or video technology shall promptly (1) permit that other party to hear the audio recording or to view the video recording, and (2) furnish a copy of the audio or video recording to that other party on receipt of payment of the reasonable cost of making that copy of the recording.

If the testimony at the deposition is recorded both stenographically, and by audio or video technology, 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 audio or video recording made by, or at the direction of, any party, is available for review, unless the deponent and all these parties agree on the record to waive the hearing or viewing of the audio or video 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 audio or video record of deposition testimony 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 audio or video record of deposition testimony made by, or at the direction of, any party, 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 recording 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 recording on receipt of payment of a reasonable charge for providing the facilities for hearing or viewing the recording, and (B) furnish a copy of the audio or video recording to the

one making the request on receipt of payment of the reasonable cost of making that copy of the recording.

The attorney or operator who has custody of an audio or video record of deposition testimony made by, or at the direction of, any party, shall retain custody of it until six months after final disposition of the action. At that time, the audio or video recording may be destroyed or erased, unless the court, on motion of any party and for good cause shown, orders that the recording 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 video recording of the deposition testimony 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. 2.5. 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 by the party noticing the deposition to record the testimony by audio or video technology, 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. If the

deposition will be conducted using instant visual display, 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. Any party or attorney requesting the provision of the instant video display of the testimony, or rough draft transcripts, shall pay the reasonable costs of those services, which may be no greater than the costs charged to any other party or attorney.

(6) Any intention to reserve the right to use at trial a video recording of the deposition testimony of a treating or consulting physician or of any expert witness under paragraph (4) of subdivision (u). In this event, the operator of the video 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 a 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 shall 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 video recording of the deposition testimony 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 audio or video technology if the notice of deposition stated an intention also to record the testimony by either of those methods, or if all the parties agree that the testimony may also be recorded by either of those methods. Any other party, at that party's expense, may make a simultaneous audio or video 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 make an audio or video record of the deposition testimony on the party or attorney who noticed the deposition, on all other parties or attorneys on whom the deposition notice was served under subdivision (c), and on any deponent whose attendance is being compelled by a deposition subpoena under Section 2020. If this notice is given three calendar days before the deposition date, it shall be made by personal service under Section 1011. Examination and cross-examination of the deponent shall proceed as permitted at trial under the provisions of the Evidence Code.

(2) If the deposition is being recorded by means of audio or video technology by, or at the direction of, any party, 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 the attorney or an independent contractor or an employee of the attorney taking the deposition, but no employee may also be the deposition officer. The attorney who selects the operator of the recording equipment shall make available a copy of the audio or video record to any party upon request and upon payment by that party of the cost of reproduction of that copy. 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 audio recording that includes the operator's name and business address, the name and business address of the operator's employer, the date, time, and place of the deposition, the caption of the case, the name of the deponent, a specification of the party on whose behalf the deposition is being taken, and any stipulations by the parties.

(E) Counsel for the parties shall identify themselves on camera or on the audio recording.

(F) The oath shall be administered to the deponent on camera or on the audio recording.

(G) If the length of a deposition requires the use of more than one unit of tape or electronic storage, the end of each unit and the beginning of each succeeding unit shall be announced on camera or on the audio recording.

(H) At the conclusion of a deposition, a statement shall be made on camera or on the audio recording 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 audio or video 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 recording. Objections to all or part of the deposition shall be made in writing. The court may permit further designations of testimony and objections as justice may require. With respect to those portions of an audio or video record of deposition testimony 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 recording be prepared for use at the trial or hearing. The original audio or video record 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 may not suspend the taking of testimony without the stipulation of all parties present, unless any party attending the deposition, including the deponent, demands that the deposition officer suspend taking the testimony to enable that party or deponent to move for a protective order on the ground that the examination is being conducted in bad faith or in a manner that unreasonably annoys, embarrasses, or oppresses that deponent or party. This motion shall be accompanied by a declaration stating facts showing a reasonable and good faith attempt at an informal resolution of each issue presented by the motion. The court, for good cause shown, may terminate the examination or may limit the scope and manner of taking the deposition as provided in subdivision (i). If the order terminates the examination, the deposition shall not thereafter be resumed, except on order of the court.

The court shall impose a monetary sanction under Section 2023 against any party, person, or attorney who unsuccessfully makes or opposes a motion for this protective order, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

(o) If a deponent fails to answer any question or to produce any document or tangible thing under the deponent's control that is specified in the deposition notice or a deposition subpoena, the party seeking discovery may move the court for an order compelling that answer or production. This motion shall be made no later than 60 days after the completion of the record of the deposition, and shall be accompanied by a declaration stating facts showing a reasonable and good faith attempt at an informal resolution of each issue presented by the motion. Notice of this motion shall be given to all parties, and to the deponent either orally at the examination, or by subsequent service in writing. If the

notice of the motion is given orally, the deposition officer shall direct the deponent to attend a session of the court at the time specified in the notice. Not less than five days prior to the hearing on this motion, the moving party shall lodge with the court a certified copy of any parts of the stenographic transcript of the deposition that are relevant to the motion. If a deposition is recorded by audio or video technology, 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 or the deponent, at the expense of the party or deponent, 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 full or partial transcript 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 audio or video technology shall promptly (1) permit that other party to hear the audio recording or to view the video recording, and (2) furnish a copy of the audio or video recording to that other party on receipt of payment of the reasonable cost of making that copy of the recording.

If the testimony at the deposition is recorded both stenographically, and by audio or video technology, 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 audio or video recording made by, or at the direction of, any party, is available for review, unless the deponent and all these parties agree on the record to waive the hearing or viewing of the audio or video 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 audio or video record of deposition testimony 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) If 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 audio or video record of deposition testimony made by, or at the direction of, any party, 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 recording 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 recording on receipt of payment of a reasonable charge for providing the facilities for hearing or viewing the recording, and (B) furnish a copy of the audio or video recording to the one making the request on receipt of payment of the reasonable cost of making that copy of the recording.

The attorney or operator who has custody of an audio or video record of deposition testimony made by, or at the direction, any party, shall retain custody of it until six months after final disposition of the action. At that time, the audio or video recording may be destroyed or erased, unless the court, on motion of any party and for good cause shown, orders that the recording 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 video recording of the deposition testimony 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) If 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. 3. Section 2025.5 of the Code of Civil Procedure is amended to read:

2025.5. (a) Notwithstanding paragraph (2) of subdivision (k) of Section 2025, unless the court issues an order to the contrary, a copy of the transcript of the deposition testimony made by, or at the direction of, any party, or an audio or video recording of the deposition testimony, if still in the possession of the deposition officer, shall be made available by the deposition officer to any person requesting a copy upon payment of a reasonable charge set by the deposition officer.

(b) If a copy is requested from the deposition officer, the deposition officer shall mail a notice to all parties attending the deposition and to the deponent at his or her last known address advising them that (1) the copy is being sought, (2) the name of the person requesting the copy, and (3) the right to seek a protective order pursuant to subdivision (i) of Section 2025. If a protective order is not served on the deposition officer within 30 days of the mailing of the notice, the deposition officer shall make the copy available to the person requesting the copy.

(c) This section shall apply only to recorded testimony taken at depositions occurring on or after January 1, 1998.

SEC. 4. Section 2.5 of this bill incorporates amendments to Section 2025 of the Code of Civil Procedure proposed by both this bill and AB 421 that are not otherwise in conflict. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2003, (2) each bill amends Section 2025 of the Code of Civil Procedure, and (3) this bill is enacted after AB 421, in which case Section 2 of this bill shall not become operative.

CHAPTER 1069

An act to add Section 45037 to, and to add and repeal Section 41329.3 of, the Education Code, relating to education, and making an appropriation therefor.

[Approved by Governor September 29, 2002. Filed with Secretary of State September 29, 2002.]

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

SECTION 1. Section 41329.3 is added to the Education Code, to read:

41329.3. (a) The County Office Fiscal Crisis and Management Assistance Team shall conduct comprehensive assessments and shall complete, by July 1, 2003, the following improvement plans for the Berkeley Unified School District:

(1) An instructional improvement plan that includes special education and programs for English language learners and is consistent with the financial improvement plan required by paragraph (2). The plan shall specify pupil outcomes that reflect significant improvement in pupil achievement, particularly in the areas of reading, writing, and mathematics. Among the areas addressed by the plan shall be the alignment between the written, taught, and tested curriculum consistent with the state's adopted instructional standards, and the use of assessment data to make appropriate pupil placements and allocate district resources. Included in the plan shall be a clear link between professional development for all instructional staff and pupil achievement objectives, including the need for ongoing analysis and use of assessment results to tailor instruction to meet the needs of all pupils.

(2) A financial improvement plan that is consistent with the instructional improvement plan required by paragraph (1) and that includes the current and future projected solvency and fiscal integrity of

the school district. The financial improvement plan shall also include, but not be limited to, specific strategies to fund the full implementation of the improvement plans specified in this section and for improving the following:

(A) Management information systems.

(B) Accounting and internal control procedures.

(C) Attendance accounting procedures.

(3) A facilities improvement plan that shall be consistent with the financial improvement plan required by paragraph (2), and that includes, but is not limited to, specific strategies for improving the following:

(A) Protection and safety for pupils, employees, and district property.

(B) Ongoing maintenance of district property.

(C) Management control and procedures for managing all construction and modernization projects.

(4) A personnel management improvement plan that is consistent with the financial improvement plan required by paragraph (2), and that includes, but is not limited to, specific strategies for improving the following:

(A) The recruitment, retention, screening, assessment, and hiring procedures for all district staff.

(B) The training of members of the governing board of the school district in the subjects about which members of the governing board must have knowledge in order to discharge their duties as board members effectively.

(C) The assessment of the administrative practices of the school district and staff development to ensure that staff have the knowledge and skills required to manage effectively the educational programs, finances, safety, and facilities maintenance of the school district.

(D) The calculation and maintenance of appropriate and efficient full-time equivalent staffing rations for all school district staff.

(E) The governance structure of the school district in relation to board policy development, operational effectiveness, and responsiveness to the community.

(F) In addition, the personnel management improvement plan shall provide data and analysis on the number of district certificated personnel who are serving on credential waivers or emergency permits. The plan shall provide for monitoring and support for personnel in their daily instructional duties and in completing subject matter and professional preparation requirements through a traditional, university-based program, alternative certification program, or training to pass the CBEST exam.

(5) A community relations improvement plan that is consistent with the financial improvement plan required by paragraph (2), and that includes, but is not limited to, specific strategies for improving the

communication among the governing board, personnel of the school district, pupils, and parents.

(b) Commencing in December 2003, and each six months thereafter until June 2005, the County Office Fiscal Crisis and Management Assistance Team shall file a written status report with the appropriate fiscal and policy committees of the Legislature, including any special committees created for the purpose of reviewing the reports, and with the legislators representing the Berkeley Unified School District, the governing board of the school district, the Alameda County Office of Education, the Superintendent of Public Instruction, the Director of Finance, and the Secretary for Education. The reports shall include the progress that the Berkeley Unified School District is making in meeting the recommendations of the improvement plans developed pursuant to subdivision (a).

(c) The County Office Fiscal Crisis and Management Assistance Team shall provide an accounting of expenditures made by it pursuant to the requirements of this act to the Controller and the Alameda County Office of Education. The Controller shall certify unexpended balances for purposes of subdivision (d) of Section 2.

(d) This section shall remain in effect only until June 1, 2006, and as of that date is repealed, unless a later enacted statute that is enacted before June 1, 2006, deletes or extends that date.

SEC. 2. Section 45037 is added to the Education Code, to read:

45037. (a) Except as provided in Section 45036, for the fiscal year 2001–02 and for any fiscal year thereafter in which a person renders service as a teacher in kindergarten or any of grades 1 to 12, inclusive, who does not have a valid certification document, the school district or county office of education in which the person is employed shall be assessed a penalty that shall be in lieu of any loss of funding that would otherwise result under Chapter 6.10 (commencing with Section 52120) of Part 28. The penalty shall be calculated as provided in subdivision (b) and withheld from state funding otherwise due to the district or county office of education.

(1) Notwithstanding Section 46300, the attendance of the noncertificated person's pupils during the period of service shall be included in the computation of average daily attendance.

(2) The noncertificated person's period of service shall not be excluded from the determination of eligibility for incentive funding for a longer instructional day or year, or both, pursuant to Article 8 (commencing with Section 46200) of Chapter 2 of Part 26.

(b) (1) For each person who rendered service in the employment of the district or county office of education as a teacher in kindergarten or any of grades 1 to 12, inclusive, during the fiscal year, add the total

number of schooldays on which the person rendered any amount of the service.

(2) For each person who rendered service in the employment of the district or county office of education as a teacher in kindergarten or any of grades 1 to 12, inclusive, during the fiscal year, for a period of service during which the person did not have a valid certification document, add the number of schooldays on which the person rendered any amount of the service without a valid certification document.

(3) Divide the number determined in paragraph (2) by the number determined in paragraph (1) and carry the result to four decimal places.

(4) Multiply a school district's revenue limit entitlement for the fiscal year, calculated pursuant to Section 42238, or it's funding amount calculated pursuant to Article 4 (commencing with Section 42280) of Chapter 7 of Part 24, as applicable, or a county office of education's funding for the fiscal year, for the program in which the noncertificated person rendered service by the number determined in paragraph (3).

(c) Beginning in 2002–03, if a county office of education draws an order for a warrant in favor of a person for whom a period of school district service is included in the calculation set forth in paragraph (2) of subdivision (b), the county office shall be assessed a penalty. The penalty assessed to a county office for any fiscal year in which one or more district teachers did not have a valid certification document shall be equal to the lesser of three amounts as follows:

(1) Fifty percent of all penalties assessed for that fiscal year to all school districts in the county office's jurisdiction pursuant to subdivision (b).

(2) One-half percent of the total expenditures for that fiscal year form unrestricted resources, as defined in the California School Accounting Manual, in the county office's county school service fund, when two or fewer districts in the county office's jurisdiction are subject penalties pursuant to subdivision (b).

(3) One percent of the total expenditures for that fiscal year from unrestricted resources, as defined in the California School Accounting Manual, in the county office's county school service fund, when three or more districts in the county office's jurisdiction are subject penalties pursuant to subdivision (b).

(d) Nothing in this section may be waived in whole or in any part.

SEC. 3. (a) The State Department of Education shall reallocate the sum of five hundred eighty thousand four hundred forty-eight dollars ($580,448) withheld from the Berkeley Unified School District's 2000–01 and 2001–02 principal apportionments, to the Kern County Office of Education for use by the County Office Fiscal Crisis and Management Assistance Team for the purposes of conducting the

assessments and completing the improvement plans specified in Section 41329.3 of the Education Code.

(b) The State Department of Education shall reallocate the sum of one hundred nineteen thousand five hundred fifty-two dollars ($119,552) scheduled to be withheld from the Berkeley Unified School District's 2002–03 first principal apportionment to the Kern County Office of Education for use by the County Office Fiscal Crisis and Management Assistance Team for the purposes of conducting the assessments and completing the improvement plans specified in Section 41329.3 of the Education Code.

(c) Commencing with the 2003–04 fiscal year, and continuing through the 2004–05 fiscal year, the Berkeley Unified School District shall allocate the sum of four hundred sixty thousand eight hundred ninety-six dollars ($460,896) from the district's general fund to implement the improvement plans specified in Section 41329.3 of the Education Code in accordance with the following schedule:

(1) In the 2003–04 fiscal year, the Berkeley Unified School District shall expend two hundred thirty thousand four hundred forty-eight dollars ($230,448) to implement the improvement plan.

(2) In the 2004–05 fiscal year, the Berkeley Unified School District shall expend two hundred thirty thousand four hundred forty-eight dollars ($230,448) to implement the improvement plan.

(d) Not later than June 30, 2005, the Alameda County Office of Education, with the assistance and concurrence of the Fiscal Crisis and Management Assistance Team, shall review the expenditures made by the Berkeley Unified School District of the funds provided in paragraphs (1) and (2) of subdivision (c) and determine the amount of expenditures made for purposes consistent with the improvement plans, and, if the expenditures are determined to be less than four hundred sixty thousand eight hundred ninety-six dollars ($460,896), the difference shall be withheld from the district's 2005–06 first principal apportionment.

(e) The amounts available in subdivisions (a) and (b) are available for expenditure during the 2002–03 and 2003–04 fiscal years. Unexpended balances as of June 30, 2004, shall be repaid to the General Fund to be reappropriated to the Berkeley Unified School District to implement the improvement plans specified in Section 41329.3 of the Education Code.

SEC. 4. Notwithstanding any provision of the Education Code, for the 2000–01 school year, every person employed by the Emery Unified School District as a teacher in kindergarten or any of grades 1 to 12, inclusive, shall be deemed to have possessed a valid certification document and shall be deemed to have received training pursuant to Section 52127 of the Education Code, if applicable.

SEC. 5. Due to the unique circumstances concerning the Berkeley Unified School District and the district's need to improve its

management and operations with the assistance of the Fiscal Crisis and Management Assistance Team, and to unique circumstances involving the operation of the Emery Unified School District, it is necessary that special funding provision be enacted, and the Legislature finds and declares that a general statute cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitution.

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.

CHAPTER 1070

An act to add Section 354.7 to the Code of Civil Procedure, relating to statutes of limitation, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 29, 2002. Filed with Secretary of State September 29, 2002.]

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

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

(a) During the period from 1942 to 1950, inclusive, many braceros came to the United States to perform grueling work in the fields and on the railroads to relieve a wartime labor shortage. A portion of the braceros' wages was withheld as a savings fund, to be paid to the braceros upon their return to Mexico, however, many braceros never received these moneys, and many of them were unaware that they were owed moneys, while others who sought payment were unable to obtain it.

(b) Many braceros came to work in California, and many subsequently returned to California and became residents or citizens of this state. California has a moral and public interest in assuring that braceros who are claiming entitlement to savings fund moneys are given a reasonable opportunity to claim their entitlement to wages withheld from them.

(c) To the extent that the statute of limitations applicable to claims for compensation is extended by this act, extension of the limitations period

is intended to be applied retroactively, irrespective of whether a claim is otherwise barred by any applicable statute of limitations under any other provision of law, including Section 361 of the Code of Civil Procedure.

SEC. 2. Section 354.7 is added to the Code of Civil Procedure, to read:

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

(1) ''Bracero'' means any person who participated in the labor importation program known as the Bracero program between January 1, 1942, and January 1, 1950, pursuant to agreements between the United States and Mexico.

(2) ''Savings fund'' means funds withheld from the wages of braceros as savings to be paid to braceros upon their return to Mexico.

(b) Notwithstanding any other provision of law, any bracero, or heir or beneficiary of a bracero, who has a claim arising out of a failure to pay or turn over savings fund amounts may bring a legal action or may continue a pending legal action to recover on that claim in any court of competent jurisdiction in this state, which court shall be deemed a proper forum for that action until its completion or resolution.

(c) Notwithstanding any other provision of law, any action brought by a bracero, or heir or beneficiary of a bracero, arising out of a failure to pay or turn over savings fund amounts shall not be dismissed for failure to comply with the otherwise applicable statute of limitations, provided the action is filed on or before December 31, 2005.

(d) The provisions of this section are severable. If any provision of this section or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

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

In order to provide just compensation to aging braceros, it is necessary that this act take effect immediately.

CHAPTER 1071

An act to add Section 3339 to the Civil Code, to add Chapter 17.3 (commencing with Section 7285) to Division 7 of Title 1 of the Government Code, to add Chapter 1 (commencing with Section 24000) to Division 20 of the Health and Safety Code, and to add Section 1171.5 to the Labor Code, relating to employment laws.

[Approved by Governor September 29, 2002. Filed with Secretary of State September 29, 2002.]

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

SECTION 1. Section 3339 is added to the Civil Code, to read:

3339. The Legislature finds and declares the following:

(a) All protections, rights, and remedies available under state law, except any reinstatement remedy prohibited by federal law, are available to all individuals regardless of immigration status who have applied for employment, or who are or who have been employed, in this state.

(b) For purposes of enforcing state labor, employment, civil rights, and employee housing laws, a person's immigration status is irrelevant to the issue of liability, and in proceedings or discovery undertaken to enforce those state laws no inquiry shall be permitted into a person's immigration status except where the person seeking to make this inquiry has shown by clear and convincing evidence that this inquiry is necessary in order to comply with federal immigration law.

(c) The provisions of this section are declaratory of existing law.

(d) The provisions of this section are severable. If any provision of this section or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

SEC. 2. Chapter 17.3 (commencing with Section 7285) is added to Division 7 of Title 1 of the Government Code, to read:

CHAPTER 17.3. ENFORCEMENT ACTIONS

7285. The Legislature finds and declares the following:

(a) All protections, rights, and remedies available under state law, except any reinstatement remedy prohibited by federal law, are available to all individuals regardless of immigration status who have applied for employment, or who are or who have been employed, in this state.

(b) For purposes of enforcing state labor, employment, civil rights, and employee housing laws, a person's immigration status is irrelevant to the issue of liability, and in proceedings or discovery undertaken to enforce those state laws no inquiry shall be permitted into a person's immigration status except where the person seeking to make the inquiry has shown by clear and convincing evidence that the inquiry is necessary in order to comply with federal immigration law.

(c) The provisions of this section are declaratory of existing law.

(d) The provisions of this section are severable. If any provision of this section or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

SEC. 3. Chapter 1 (commencing with Section 24000) is added to Division 20 of the Health and Safety Code, to read:

CHAPTER 1. ENFORCEMENT ACTIONS

24000. The Legislature finds and declares the following:

(a) All protections, rights, and remedies available under state law, except any reinstatement remedy prohibited by federal law, are available to all individuals regardless of immigration status who have applied for employment, or who are or who have been employed, in this state.

(b) For purposes of enforcing state labor and employment laws, a person's immigration status is irrelevant to the issue of liability, and in proceedings or discovery undertaken to enforce those state laws no inquiry shall be permitted into a person's immigration status except where the person seeking to make this inquiry has shown by clear and convincing evidence that the inquiry is necessary in order to comply with federal immigration law.

(c) The provisions of this section are declaratory of existing law.

(d) The provisions of this section are severable. If any provision of this section or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

SEC. 4. Section 1171.5 is added to the Labor Code, to read:

1171.5. The Legislature finds and declares the following:

(a) All protections, rights, and remedies available under state law, except any reinstatement remedy prohibited by federal law, are available to all individuals regardless of immigration status who have applied for employment, or who are or who have been employed, in this state.

(b) For purposes of enforcing state labor and employment laws, a person's immigration status is irrelevant to the issue of liability, and in proceedings or discovery undertaken to enforce those state laws no inquiry shall be permitted into a person's immigration status except where the person seeking to make this inquiry has shown by clear and convincing evidence that the inquiry is necessary in order to comply with federal immigration law.

(c) The provisions of this section are declaratory of existing law.

(d) 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.

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CHAPTER 1072

An act to add Article 1.75 (commencing with Section 26638.5) to Chapter 2 of Part 3 of Division 2 of Title 3 of the Government Code, relating to counties.

[Approved by Governor September 29, 2002. Filed with Secretary of State September 29, 2002.]

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

SECTION 1. Article 1.75 (commencing with Section 26638.5) is added to Chapter 2 of Part 3 of Division 2 of Title 3 of the Government Code, to read:

Article 1.75. Merced County Court Security Division

26638.5. Notwithstanding any other provision of law, the Board of Supervisors of Merced County may abolish, by ordinance, the Merced County Marshal's office and establish a court security division in the Merced County Sheriff's Department. If the board of supervisors chooses to abolish this office, the following provisions shall apply:

(a) The sheriff shall be appointing authority for all division personnel. The person selected by the sheriff to oversee the operation of court security services shall report directly to the sheriff, or his or her designee.

(b) Notwithstanding any other provision of law, all personnel of the marshal's office affected by the abolition of the marshal's office in Merced County shall become employees of the sheriff's department at their existing or equivalent classification, salaries, and benefits.

(c) Permanent employees of the marshal's office on the effective date of transfer of services from the marshal to the sheriff pursuant to this section shall be deemed to be qualified, and no other qualifications shall be required for employment or retention. Promotions for all personnel from the marshal's office shall be made pursuant to standards set by the sheriff. Probationary employees in the marshal's office on the effective date of the abolition shall not be required to serve a new probationary period. All probationary time served as an employee of the marshall shall be credited toward probationary time required as an employee of the sheriff's department.

(d) All county service with the marshal's office by employees of the marshal's office on the effective date of the abolition of the marshal's office shall be counted toward seniority in the court security division of the sheriff's department.

(e) No employee of the marshal's office on the effective date of a consolidation pursuant to this section shall lose peace officer status, or otherwise be adversely affected as a result of the abolition and merger of personnel into the sheriff's department.

(f) The personnel of the marshal's office who become employees of the sheriff's department may not be transferred from the division in the sheriff's department under which court security services are provided unless the transfer is voluntary.

(g) Personnel of the abolished marshal's office shall be entitled to request an assignment to another division within the sheriff's department, and that request shall be reviewed in the same manner as any other request from within the department.

CHAPTER 1073

An act to amend Sections 6252 and 54952 of the Government Code, relating to local agencies.

[Approved by Governor September 29, 2002. Filed with Secretary of State September 29, 2002.]

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

SECTION 1. Section 6252 of the Government Code is amended to read:

6252. As used in this chapter:

(a) ''State agency'' means every state office, officer, department, division, bureau, board, and commission or other state body or agency, except those agencies provided for in Article IV (except Section 20 thereof) or Article VI of the California Constitution.

(b) ''Local agency'' includes a county; city, whether general law or chartered; city and county; school district; municipal corporation; district; political subdivision; or any board, commission or agency thereof; other local public agency; or entities that are legislative bodies of a local agency pursuant to subdivisions (c) and (d) of Section 54952.

(c) ''Person'' includes any natural person, corporation, partnership, limited liability company, firm, or association.

(d) ''Public agency'' means any state or local agency.

(e) ''Public records'' includes any writing containing information relating to the conduct of the public's business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics. ''Public records'' in the custody of, or maintained by, the

Governor's office means any writing prepared on or after January 6, 1975.

(f) ''Writing'' means any handwriting, typewriting, printing, photographing, and every other means of recording upon any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combination thereof, and all papers, maps, magnetic or paper tapes, photographic films and prints, photostatic copies, magnetic or punched cards, discs, drums, and other documents.

(g) ''Member of the public'' means any person, except a member, agent, officer, or employee of a federal, state, or local agency acting within the scope of his or her membership, agency, office, or employment.

SEC. 1.5. Section 6252 of the Government Code is amended to read:

6252. As used in this chapter:

(a) ''State agency'' means every state office, officer, department, division, bureau, board, and commission or other state body or agency, except those agencies provided for in Article IV (except Section 20 thereof) or Article VI of the California Constitution.

(b) ''Local agency'' includes a county; city, whether general law or chartered; city and county; school district; municipal corporation; district; political subdivision; or any board, commission or agency thereof; other local public agency; or entities that are legislative bodies of a local agency pursuant to subdivisions (c) and (d) of Section 54952.

(c) ''Person'' includes any natural person, corporation, partnership, limited liability company, firm, or association.

(d) ''Public agency'' means any state or local agency.

(e) ''Public records'' includes any writing containing information relating to the conduct of the public's business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics. ''Public records'' in the custody of, or maintained by, the Governor's office means any writing prepared on or after January 6, 1975.

(f) ''Writing'' means any handwriting, typewriting, printing, photostating, photographing, photocopying, transmitting by electronic mail or facsimile, and every other means of recording upon any tangible thing any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combinations thereof, and any record thereby created, regardless of the manner in which the record has been stored.

(g) ''Member of the public'' means any person, except a member, agent, officer, or employee of a federal, state, or local agency acting within the scope of his or her membership, agency, office, or employment.

SEC. 2. Section 54952 of the Government Code is amended to read:

54952. As used in this chapter, ''legislative body'' means:

(a) The governing body of a local agency or any other local body created by state or federal statute.

(b) A commission, committee, board, or other body of a local agency, whether permanent or temporary, decisionmaking or advisory, created by charter, ordinance, resolution, or formal action of a legislative body. However, advisory committees, composed solely of the members of the legislative body that are less than a quorum of the legislative body are not legislative bodies, except that standing committees of a legislative body, irrespective of their composition, which have a continuing subject matter jurisdiction, or a meeting schedule fixed by charter, ordinance, resolution, or formal action of a legislative body are legislative bodies for purposes of this chapter.

(c) (1) A board, commission, committee, or other multimember body that governs a private corporation, limited liability company, or other entity that either:

(A) Is created by the elected legislative body in order to exercise authority that may lawfully be delegated by the elected governing body to a private corporation, limited liability company, or other entity.

(B) Receives funds from a local agency and the membership of whose governing body includes a member of the legislative body of the local agency appointed to that governing body as a full voting member by the legislative body of the local agency.

(2) Notwithstanding subparagraph (B) of paragraph (1), no board, commission, committee, or other multimember body that governs a private corporation, limited liability company, or other entity that receives funds from a local agency and, as of February 9, 1996, has a member of the legislative body of the local agency as a full voting member of the governing body of that private corporation, limited liability company, or other entity shall be relieved from the public meeting requirements of this chapter by virtue of a change in status of the full voting member to a nonvoting member.

(d) The lessee of any hospital the whole or part of which is first leased pursuant to subdivision (p) of Section 32121 of the Health and Safety Code after January 1, 1994, where the lessee exercises any material authority of a legislative body of a local agency delegated to it by that legislative body whether the lessee is organized and operated by the local agency or by a delegated authority.

SEC. 3. Section 1.5 of this bill incorporates amendments to Section 6252 of the Government Code proposed by both this bill and AB 1962. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2003, (2) each bill amends Section 6252

of the Government Code, and (3) this bill is enacted after AB 1962, in which case Section 1 of this bill shall not become operative.

CHAPTER 1074

An act to add Section 11139.3 to the Government Code, and to amend Section 50801.5 of the Health and Safety Code, relating to discrimination.

[Approved by Governor September 29, 2002. Filed with Secretary of State September 29, 2002.]

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

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

(a) Many runaway and homeless youth are living in the streets of the major urban centers of this state without adequate food, shelter, health care, or financial support. Many other youth are at risk of homelessness.

(b) Homeless youth, runaway youth, and youth at risk of homelessness often have a history of physical or sexual abuse at home, and of having been rejected or forced out of the parental home.

(c) There are many youth who have been emancipated from the foster care system who have neither the support of a family system nor a permanent living situation to support them as they transition into adulthood.

(d) The lack of affordable and available housing in this state is the primary barrier to these youth in completing an education, securing and maintaining employment, accessing health care, and making a successful transition to adulthood.

(e) While California has adopted legislation to assist youth under the age of 18 years, young adults are among the state's most underserved population.

(f) These youth urgently need specialized services to locate them, to assist them with their immediate survival needs, and to address their long-term need to reunite with their family or find a suitable home.

(g) Because many homeless youth have suffered from abuse by adults, these youth require housing and shelters separate from older adults.

(h) Due to the possibility that homeless youth will not seek housing, shelter, or assistance if they must share shelter space with older adults, and due to the difficulty of assessing potential abuse by adults, it will be impractical for providers to meet the objective of this act by interviewing

applicants on an individual basis, and instead, age must be used as a criterion.

(i) This act establishes age as a criterion for participation in, and admission to, supportive housing for homeless youth and is intended to meet the exception set forth in paragraph (2) of subsection (b) of Section 6103 of Title 42 of the United States Code.

(j) This act will assist in implementing the Foster Care Independence Act of 1999 (Public Law 106-169), the Missing, Exploited, and Runaway Children Protection Act of 1999 (Public Law 106-71), and the Runaway and Homeless Youth Act (42 U.S.C. Sec. 5701 and following); and it will further the goals of the Independent Living Program described in Section 10609.4 of the Welfare and Institutions Code.

SEC. 2. Section 11139.3 is added to the Government Code, to read:

11139.3. (a) It is the policy of this state and the purpose of this section to facilitate and support the development and operation of housing for homeless youth.

(b) The provision of housing for homeless youth is hereby authorized and shall not be considered unlawful age discrimination, notwithstanding any other provision of law, including, but not limited to, Sections 51, 51.2, and 51.10 of the Civil Code, Sections 11135, 12920, and 12955 of this code, Chapter 11.5 (commencing with Section 50800) of Part 2 of Division 31 of the Health and Safety Code, and local housing or age discrimination ordinances.

(c) This section shall not be construed to permit discrimination against families with children.

(d) This section shall occupy the field of regulation of housing for homeless youth by any local public entity, including, but not limited to, a city, county, and city and county.

(e) For purposes of this section, the following definitions shall apply:

(1) ''At risk of becoming homeless'' means facing eviction or termination of one's current housing situation.

(2) ''Homeless youth'' means either of the following:

(A) A person who is at least 18 years of age, but not older than 24 years of age, and meets one of the following conditions:

(i) Is homeless or at risk of becoming homeless.

(ii) Is no longer eligible for foster care on the basis of age.

(iii) Has run away from home.

(B) A person who is less than 18 years of age who is emancipated pursuant to Part 6 (commencing with Section 7000) of Division 1 of the Family Code and who is homeless or at risk of becoming homeless.

(3) ''Housing for homeless youth'' means emergency, transitional, or permanent housing tied to supportive services that assist homeless youth in stabilizing their lives and developing the skills and resources they

need to make a successful transition to independent, self-sufficient adulthood.

SEC. 3. Section 50801.5 of the Health and Safety Code is amended to read:

50801.5. (a) The department shall adopt regulations for the administration of the Emergency Housing and Assistance Program. The regulations shall govern the equitable distribution of funds in accordance with the intent and provisions of this chapter, and shall ensure that the program is administered in an effective and efficient manner. The regulations shall provide for reasonable delegation of authority to designated local boards, ensure that local priorities and criteria are reasonably designed to address the needs of homeless people, and ensure that designated local boards meet reasonable standards of inclusiveness, accountability, nondiscrimination, and integrity.

(b) The regulations adopted pursuant to this section shall ensure that emergency shelter and services will be provided on a first-come-first-served basis for whatever time periods are established by the shelter. No individual or household may be denied shelter or services because of an inability to pay. Nothing in this provision shall be construed to preclude a shelter from accepting payment vouchers provided through any other public or private program so long as no shelter beds are reserved beyond sundown for that purpose. Notwithstanding Section 11135 of the Government Code or any other provision of law, nothing in this section shall be construed to preclude a provider of emergency shelter or transitional housing from restricting occupancy on the basis of sex or, in the case of an emergency shelter or transitional housing offered exclusively to persons 24 years of age or younger pursuant to Section 11139.3 of the Government Code, on the basis of age. However, in the case of families, providers of emergency shelter or transitional housing shall provide, to the greatest extent feasible, adequate facilities within their range of services so that all members of a family may be housed together, regardless of age and gender.

CHAPTER 1075

An act to amend Section 17582 of, and to add Sections 17074.27, 17074.30, and 17584.2 to, the Education Code, relating to school facilities.

[Approved by Governor September 29, 2002. Filed with Secretary of State September 29, 2002.]

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) Despite the fact that the environmental and educational communities have known for years that lead paint still exists in school buildings in the state, many of these lead hazards have not been mitigated and continue to pose a danger to the health and well being of children.

(2) A survey of the State Department of Health Services found that, of 200 randomly selected California elementary schools, 77 percent have lead-based paint; 38 percent have lead-based paint that is deteriorating, exposing children to possible lead poisoning; 6 percent have soil lead levels greater than the Environmental Protection Agency's limit; and 18 percent have lead levels in drinking water in excess of the action level set by the Environmental Protection Agency.

(3) Lead is a highly toxic heavy metal that adversely affects virtually every organ system in the body.

(4) Most children with lead poisoning have no overt symptoms, but can suffer permanent neurological deficits and behavioral problems, including attention deficit disorder and loss of IQ points.

(5) The United States Center for Disease Control and Prevention has found that ''lead poisoning remains the most common and societally devastating environmental disease of young children.''

(6) Childhood lead poisoning has a significant financial cost, as lead poisoned children incur high medical and special education costs and have reduced lifetime earning potential.

(b) Therefore, it is the intent of the Legislature to encourage all public schools to identify all lead hazards as quickly as possible.

SEC. 2. Section 17074.27 is added to the Education Code, to read:

17074.27. In addition to the uses specified in Section 17074.25, a modernization apportionment may also be used for the control, management, or abatement of lead.

SEC. 3. Section 17074.30 is added to the Education Code, to read:

17074.30. Commencing with applications submitted after January 1, 2004, any school district applying for funding pursuant to this article shall certify that it has considered the potential for the presence of lead-containing materials in the modernization projects and will follow all relevant federal, state, and local standards for the management of any identified lead.

SEC. 4. 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, the inspection, identification, sampling, and analysis of building materials to determine the presence of lead-containing materials, the control, management, and removal of lead-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. 5. Section 17584.2 is added to the Education Code, to read:

17584.2. At the public hearing required pursuant to Section 17584.1, the governing board of the school district shall also address the use of deferred maintenance funds for the inspection, identification, sampling, and analysis of building materials to determine the presence of lead-containing materials and the control, management, and removal of lead-containing materials.

CHAPTER 1076

An act to amend Sections 11628 and 12959 of the Insurance Code, relating to insurance.

[Approved by Governor September 29, 2002. Filed with Secretary of State September 29, 2002.]

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

SECTION 1. Section 11628 of the Insurance Code is amended to read:

11628. (a) No admitted insurer, licensed to issue and issuing motor vehicle liability policies as defined in Section 16450 of the Vehicle Code, shall fail or refuse to accept an application for that insurance, to issue that insurance to an applicant therefor, or issue or cancel that insurance under conditions less favorable to the insured than in other comparable cases, except for reasons applicable alike to persons of every race, language, color, religion, national origin, ancestry, or the same geographic area; nor shall race, language, color, religion, national origin, ancestry, or location within a geographic area of itself constitute a condition or risk for which a higher rate, premium, or charge may be required of the insured for that insurance.

As used in this section ''geographic area'' means a portion of this state of not less than 20 square miles defined by description in the rating manual of an insurer or in the rating manual of a rating bureau of which the insurer is a member or subscriber. In order that geographic areas used for rating purposes may reflect homogeneity of loss experience, a record of loss experience for the geographic area shall include the breakdown of actual loss experience statistics by ZIP Code area (as designated by the United States Postal Service) within each geographic area for family owned private passenger motor vehicles and lightweight commercial motor vehicles, under $1^1/_2$-ton load capacity, used for local service or retail delivery, normally within a 50-mile radius of garaging, and which are not part of a fleet of five or more motor vehicles under one ownership. A record of loss experience for the geographic area, including that statistical data by ZIP Code area, shall be submitted annually to the commissioner for examination by each insurer licensed to issue and issuing motor vehicle liability policies, motor vehicle physical damage policies, or both. Loss experience shall include separate loss data for each type of coverage, including liability or physical damage coverage, underwritten. That report shall include the insurer's statewide loss ratio, loss adjustment expense ratio, expense ratio, and combined ratio on its assigned-risk business. An insurer may satisfy its obligation to report statistical data under this subdivision by providing its loss experience data and statewide expense ratio and combined ratio on its assigned-risk business to a rating or advisory organization for submission to the commissioner. This data shall be made available to the public by the commissioner annually after examination. However, the data shall be released in aggregate form by ZIP Code in order that no individual insurer's loss experience for any specific geographic area be revealed. Differentiation in rates between geographical areas shall not constitute unfair discrimination.

All information reported to the department pursuant to this subdivision shall be confidential.

As used in this section, (1) ''language'' means the inability to speak, read, write, or comprehend the English language, (2) ''dependents'' shall include, but not be limited to, issue regardless of generation, and (3) ''spouse'' shall be determined without regard to current marital status.

(b) The commissioner may require insurers with combined ratios on statewide assigned-risk business that are 10 percent above the mean combined ratio for all plan participants to also report the following:

(1) The reason for the excessive ratio.

(2) A plan for reducing the ratio, and when the reduction can be expected to occur. The commissioner may require insurers subject to this subdivision to provide periodic reports on the progress in reducing the combined ratio.

(c) No admitted insurer, licensed to issue and issuing motor vehicle liability insurance policies as defined in Section 16450 of the Vehicle Code, shall fail or refuse to accept an application for that insurance, refuse to issue that insurance to an applicant therefor, or cancel that insurance solely for the reason that the applicant for that insurance or any insured is employed in a specific occupation, or is on active duty service in the Armed Forces of the United States.

Nothing in this section shall prohibit an insurer from:

(1) Considering the occupation of the applicant or insured as a condition or risk for which a higher rate or discounted rate may be required or offered for coverage in the course and scope of his or her occupation.

(2) Charging a deviated rate to any classification of risks involving a specific occupation, or grouping thereof, if the rate meets the requirements of Chapter 9 (commencing with Section 1850) of Part 2 of Division 1 and is based upon actuarial data which demonstrates a significant actual historical differential between past losses or expenses attributable to the specific occupation, or grouping thereof, and the past losses or expenses attributable to other classification of risks. For purposes of compiling that actuarial data for a specific occupation or grouping thereof, a person shall be deemed employed in the occupation in which that data is compiled if: (A) the majority of his or her employment during the previous year was in the occupation, or (B) the majority of his or her aggregate earnings for the immediate preceding three-year period were derived from the occupation, or (C) the person is a member in good standing of a union which is an authorized collective bargaining agent for persons engaged in the occupation.

Nothing in this section shall be construed to include in the definition of ''occupation'' any status or activity which does not result in remuneration for work done or services performed, or self-employment in a business operated out of an applicant's or insured's place of

residence or persons engaged in the renting, leasing, selling, repossessing, rebuilding, wrecking, or salvaging of motor vehicles.

(d) Nothing in this section shall limit or restrict the ability of an insurer to refuse to accept an application for or refuse to issue or cancel such insurance for the reason that it is a commercial vehicle or based upon the consideration of a vehicle's size, weight, design, or intended use.

(e) It is the intent of the Legislature that actuarial data by occupation may be examined for credibility by the commissioner on the same basis as any other automobile insurance data which he or she is empowered to examine.

(f) (1) Except as provided in Article 4 (commencing with Section 11620), nothing in this section or in Article 10 (commencing with Section 1861.01) of Chapter 9 of Part 2 of Division 1 or in any other provision of this code, shall prohibit an insurer from limiting the issuance or renewal of insurance as defined in subdivision (a) of Section 660 to persons who engage in, or have formerly engaged in, governmental or military service or segments of categories thereof, and their spouses, dependents, and former dependents or spouses.

(2) The term ''military service'' includes, but is not limited to, officer and warrant officer candidates, cadets or midshipmen at a service academy, cadets or midshipmen in advance Reserve Officer Training Corps programs or on Reserve Officer Training Corps program scholarships, National Guard officer candidates, students in government-sponsored precommissioning programs, and foreign military officers while on temporary duty in the United States.

(g) Any person subject to regulation by the commissioner pursuant to this code that fails to comply with a data call required by the department pursuant to subdivision (a) shall be liable to the state for a civil penalty in an amount not exceeding five thousand dollars ($5,000) for each 30-day period that the person is not in compliance, unless the failure to comply is willful, in which case the civil penalty shall be in an amount not to exceed ten thousand dollars ($10,000) for each 30-day period that the person is not in compliance, but not to exceed an aggregate amount of one hundred thousand dollars ($100,000). The commissioner shall collect the amount so payable and may bring an action in the name of the people of the State of California to enforce collection. These penalties shall be in addition to other penalties provided by law.

(h) This section shall be known and may be cited as the ''Rosenthal Auto Insurance Nondiscrimination Law.''

SEC. 2. Section 12959 of the Insurance Code is amended to read:

12959. (a) On January 1, 1990, and on every January 1, thereafter, the commissioner shall publish and distribute a comparison of insurance

rates report for those lines of insurance which, in the comissioner's judgment, are of most interest to individual purchasers of personal lines of coverage. The report shall be available to consumers. The distribution shall be designed to make consumers throughout the state aware of the content of the report. This report shall be prepared by the commissioner in a manner designed to provide information useful to consumers so that they may make informed comparisons of coverages and rates.

(b) The submission of any false rate information by any such insurer pursuant to a request of the commissioner for the purpose of compiling comparative data for the report to be published as required in subdivision (a), shall be punishable by a civil penalty not to exceed one hundred thousand dollars ($100,000). Any person subject to regulation by the commissioner pursuant to this code that fails to comply with a data call required by the department pursuant to this section shall be liable to the state for a civil penalty in an amount not exceeding five thousand dollars ($5,000) for each 30-day period that the person is not in compliance, unless the failure to comply is willful, in which case the civil penalty shall be in an amount not to exceed ten thousand dollars ($10,000) for each 30-day period that the person is not in compliance, but not to exceed an aggregate amount of one hundred thousand dollars ($100,000). In determining the level of the penalty, the commissioner shall consider the good faith of the insurer and any similar prior violations by the insurer under this code.

CHAPTER 1077

An act to amend Sections 3176, 3183, and 3184 of, and to add Section 3188 to, the Family Code, relating to mediation.

[Approved by Governor September 29, 2002. Filed with Secretary of State September 29, 2002.]

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

SECTION 1. Section 3176 of the Family Code is amended to read:

3176. (a) Notice of mediation and of any hearing to be held pursuant to this chapter shall be given to the following persons:

(1) Where mediation is required to settle a contested issue of custody or visitation, to each party and to each party's counsel of record.

(2) Where a stepparent or grandparent seeks visitation rights, to the stepparent or grandparent seeking visitation rights, to each parent of the child, and to each parent's counsel of record.

(b) Notice shall be given by certified mail, return receipt requested, postage prepaid, to the last known address.

(c) Notice of mediation pursuant to Section 3188 shall state that all communications involving the mediator shall be kept confidential between the mediator and the disputing parties.

SEC. 2. Section 3183 of the Family Code is amended to read:

3183. (a) Except as provided in Section 3188, the mediator may, consistent with local court rules, submit a recommendation to the court as to the custody of or visitation with the child.

(b) Where the parties have not reached agreement as a result of the mediation proceedings, the mediator may recommend to the court that an investigation be conducted pursuant to Chapter 6 (commencing with Section 3110) or that other services be offered to assist the parties to effect a resolution of the controversy before a hearing on the issues.

(c) In appropriate cases, the mediator may recommend that restraining orders be issued, pending determination of the controversy, to protect the well-being of the child involved in the controversy.

SEC. 3. Section 3184 of the Family Code is amended to read:

3184. Except as provided in Section 3188, nothing in this chapter prohibits the mediator from recommending to the court that counsel be appointed, pursuant to Chapter 10 (commencing with Section 3150), to represent the minor child. In making this recommendation, the mediator shall inform the court of the reasons why it would be in the best interest of the minor child to have counsel appointed.

SEC. 4. Section 3188 is added to the Family Code, to read:

3188. (a) Any court selected by the Judicial Council under subdivision (c) may voluntarily adopt a confidential mediation program that provides for all of the following:

(1) The mediator may not make a recommendation as to custody or visitation to anyone other than the disputing parties, except as otherwise provided in this section.

(2) If total or partial agreement is reached in mediation, the mediator may report this fact to the court. If both parties consent in writing, where there is a partial agreement, the mediator may report to the court a description of the issues still in dispute, without specific reference to either party.

(3) In making the recommendation described in Section 3184, the mediator may not inform the court of the reasons why it would be in the best interest of the minor child to have counsel appointed.

(4) If the parties have not reached agreement as a result of the initial mediation, this section does not prohibit the court from requiring subsequent mediation that may result in a recommendation as to custody or visitation with the child if the subsequent mediation is conducted by a different mediator with no prior involvement with the case or

knowledge of any communications, as defined in Section 1040 of the Evidence Code, with respect to the initial mediation. The court, however, shall inform the parties that the mediator will make a recommendation to the court regarding custody or visitation in the event that the parties cannot reach agreement on these issues.

(5) If an initial screening or intake process indicates that the case involves serious safety risks to the child, such as domestic violence, sexual abuse, or serious substance abuse, the court may provide an initial emergency assessment service that includes a recommendation to the court concerning temporary custody or visitation orders in order to expeditiously address those safety issues.

(b) This section shall become operative upon the appropriation of funds in the annual Budget Act sufficient to implement this section.

(c) This section shall apply only in four or more counties selected by the Judicial Council that currently allow a mediator to make custody recommendations to the court and have more than 1,000 family law case filings per year. The Judicial Council may also make this section applicable to additional counties that have fewer than 1,000 family law case filings per year.

CHAPTER 1078

An act to amend Sections 11180 and 11181 of the Penal Code, relating to the Interstate Compact for the Supervision of Adult Offenders.

[Approved by Governor September 29, 2002. Filed with Secretary of State September 29, 2002.]

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

SECTION 1. 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 as to those states that have ratified 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. 2. Section 11181 of the Penal Code is amended to read:

11181. (a) There is hereby established the California Council for Interstate Adult Offender Supervision.

(b) The council shall exercise oversight and advocacy concerning its participation in Interstate Commission activities, and other duties as may be determined by the Legislature or Governor, including but not

limited to, development of policy concerning operations and procedures of the compact within the state.

(c) There shall be seven members of the council. The Director of Corrections, or his or her designee, shall be a member and serve as the commissioner, who shall represent California and serve on the Interstate Commission for Adult Offender Supervision. The commissioner shall also be the Compact Administrator for the State of California for purposes of the Interstate Compact for Adult Offender Supervision. The Governor shall appoint three members, one of whom shall represent victims rights groups, and one of whom shall represent chief probation officers. One member each shall be appointed by the Senate Committee on Rules and the Speaker of the Assembly. The Judicial Council shall appoint one superior court judge as a member.

(d) With the exception of the commissioner, each member of the council shall serve for a term of four years. Council members shall not be compensated, except for reasonable per diem expenses related to their work for council purposes.

(e) The council shall, not later than July 1, 2005, submit a report to the Legislature on the status of implementing the Interstate Compact for Adult Offender Supervision in California. The report shall clearly differentiate the role and responsibilities of the state Compact Administrator from local supervisory agencies and shall articulate the interdependence between the state Compact Administrator and other related entities, including, but not limited to, local supervisory agencies. Additionally, the report shall identify the process by which the State Council communicates with county probation offices and Superior courts to ensure the state's compliance with the Interstate Compact for Adult Offender Supervision.

CHAPTER 1079

An act to amend Sections 5094, 8022, 8028, and 8028.2 of, to add Sections 153.5, 2570.26, 2570.27, 2570.28, 2570.29, 2570.30, 2570.31, and 2570.32 to, to amend and repeal Sections 805.2 and 8020 of, and to repeal Section 2570.17 of, the Business and Professions Code, relating to professions and vocations, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 29, 2002. Filed with Secretary of State September 29, 2002.]

I am signing Senate Bill 1244. However, I am vetoing Section 2 (8) (d) of this measure, which would authorize the Medical Board of California to expend the first $300,000

deposited in the Contingent Fund of the Medical Board of California in the 2002–03 fiscal year pursuant to Section 125.3. Existing law already requires the Board to complete the peer review study for which this funding would be provided and I do not support appropriating additional funds for this purpose, especially given the already insecure fiscal condition of the fund.

GRAY DAVIS, Governor

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

SECTION 1. Section 153.5 is added to the Business and Professions Code, to read:

153.5. In the event that a newly authorized board replaces an existing or a previous board, the director may appoint an interim executive officer for the board who shall serve temporarily until the new board appoints a permanent executive officer.

SEC. 2. Section 805.2 of the Business and Professions Code, as added by Section 2 of Chapter 615 of the Statutes of 2001, is amended to read:

805.2. (a) It is the intent of the Legislature to provide for a comprehensive study of the peer review process as it is conducted by peer review bodies defined in paragraph (1) of subdivision (a) of Section 805, in order to evaluate the continuing validity of Section 805 and Sections 809 to 809.8, inclusive, and their relevance to the conduct of peer review in California. The Medical Board of California shall contract with the Institute for Medical Quality to conduct this study, which shall include, but not be limited to, the following components:

(1) A comprehensive description of the various steps of and decisionmakers in the peer review process as it is conducted by peer review bodies throughout the state, including the role of other related committees of acute care health facilities and clinics involved in the peer review process.

(2) A survey of peer review cases to determine the incidence of peer review by peer review bodies, and whether they are complying with the reporting requirement in Section 805.

(3) A description and evaluation of the roles and performance of various state agencies, including the State Department of Health Services and occupational licensing agencies that regulate healing arts professionals, in receiving, reviewing, investigating, and disclosing peer review actions, and in sanctioning peer review bodies for failure to comply with Section 805.

(4) An assessment of the cost of peer review to licentiates and the facilities which employ them.

(5) An assessment of the time consumed by the average peer review proceeding, including the hearing provided pursuant to Section 809.2, and a description of any difficulties encountered by either licentiates or

facilities in assembling peer review bodies or panels to participate in peer review decisionmaking.

(6) An assessment of the need to amend Section 805 and Sections 809 to 809.8, inclusive, to ensure that they continue to be relevant to the actual conduct of peer review as described in paragraph (1), and to evaluate whether the current reporting requirement is yielding timely and accurate information to aid licensing boards in their responsibility to regulate and discipline healing arts practitioners when necessary, and to assure that peer review bodies function in the best interest of patient care.

(7) Recommendations of additional mechanisms to stimulate the appropriate reporting of peer review actions under Section 805.

(8) Recommendations regarding the Section 809 hearing process to improve its overall effectiveness and efficiency.

(b) The Institute of Medical Quality shall exercise no authority over the peer review processes of peer review bodies. However, peer review bodies, health care facilities, health care clinics, and health care service plans shall cooperate with the institute and provide data, information, and case files as requested in the timeframes specified by the institute.

(c) The institute shall work in cooperation with and under the general oversight of the Medical Director of the Medical Board of California and shall submit a written report with its findings and recommendations to the board and the Legislature no later than November 1, 2003.

(d) For the purpose of carrying out this section, the board is authorized to expend the first three hundred thousand dollars ($300,000) that is deposited in the Contingent Fund of the Medical Board of California in the 2002–03 fiscal year pursuant to Section 125.3.

SEC. 3. Section 805.2 of the Business and Professions Code, as added by Section 4 of Chapter 614 of the Statutes of 2001, is repealed.

SEC. 4. Section 2570.17 of the Business and Professions Code is repealed.

SEC. 5. Section 2570.26 is added to the Business and Professions Code, to read:

2570.26. (a) The board may, after a hearing, deny, suspend, revoke, or place on probation a license, certificate, inactive license, inactive certificate, or limited permit.

(b) As used in this chapter, ''license'' includes a license, certificate, limited permit, or any other authorization to engage in practice regulated by this chapter.

(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 board shall have all the powers granted therein.

SEC. 6. Section 2570.27 is added to the Business and Professions Code, to read:

2570.27. (a) The board may discipline a licensee by any or a combination of the following methods:

(1) Placing the license on probation with terms and conditions.

(2) Suspending the license and the right to practice occupational therapy for a period not to exceed one year.

(3) Revoking the license.

(4) Suspending or staying the disciplinary order, or portions of it, with or without conditions.

(5) Taking other action as the board, in its discretion, deems proper.

(b) The board may issue an initial license on probation, with specific terms and conditions, to any applicant who has violated any provision of this chapter or the regulations adopted pursuant to it, but who has met all other requirements for licensure.

SEC. 7. Section 2570.28 is added to the Business and Professions Code, to read:

2570.28. The board may deny or discipline a licensee for any of the following:

(a) Unprofessional conduct, including, but not limited to, the following:

(1) Incompetence or gross negligence in carrying out usual occupational therapy functions.

(2) Repeated similar negligent acts in carrying out usual occupational therapy functions.

(3) A conviction of practicing medicine without a license in violation of Chapter 5 (commencing with Section 2000), in which event a certified copy of the record of conviction shall be conclusive evidence thereof.

(4) The use of advertising relating to occupational therapy which violates Section 17500.

(5) Denial of licensure, revocation, suspension, restriction, or any other disciplinary action against a licensee by another state or territory of the United States, by any other government agency, or by another California health care professional licensing board. A certified copy of the decision, order, or judgment shall be conclusive evidence thereof.

(b) Procuring a license by fraud, misrepresentation, or mistake.

(c) 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 any regulation adopted pursuant to this chapter.

(d) Making or giving any false statement or information in connection with the application for issuance or renewal of a license.

(e) Conviction of a crime or of any offense substantially related to the qualifications, functions, or duties of a licensee, in which event the record of the conviction shall be conclusive evidence thereof.

(f) Impersonating an applicant or acting as proxy for an applicant in any examination required under this chapter for the issuance of a license.

(g) Impersonating a licensed practitioner, or permitting or allowing another unlicensed person to use a license.

(h) Committing any fraudulent, dishonest, or corrupt act that is substantially related to the qualifications, functions, or duties of a licensee.

(i) Committing any act punishable as a sexually related crime, if that act is substantially related to the qualifications, functions, or duties of a licensee, in which event a certified copy of the record of conviction shall be conclusive evidence thereof.

(j) Using excessive force upon or mistreating or abusing any patient. For the purposes of this subdivision, ''excessive force'' means force clearly in excess of that which would normally be applied in similar clinical circumstances.

(k) Falsifying or making grossly incorrect, grossly inconsistent, or unintelligible entries in a patient or hospital record or any other record.

(*l*) Changing the prescription of a physician and surgeon or falsifying verbal or written orders for treatment or a diagnostic regime received, whether or not that action resulted in actual patient harm.

(m) Failing to maintain confidentiality of patient medical information, except as disclosure is otherwise permitted or required by law.

(n) Delegating to an unlicensed employee or person a service that requires the knowledge, skills, abilities, or judgement of a licensee.

(o) Committing any act that would be grounds for denial of a license under Section 480.

(p) Except for good cause, the knowing failure to protect patients by failing to follow infection control guidelines of the board, thereby risking transmission of blood-borne infectious diseases from licensee to patient, from patient to patient, or from patient to licensee.

(1) In administering this subdivision, the board shall consider referencing the standards, regulations, and guidelines of the State Department of Health Services developed pursuant to Section 1250.11 of the Health and Safety Code and the standards, guidelines, and regulations pursuant to the California Occupational Safety and Health Act of 1973 (Part 1 (commencing with Section 63001) of Division 5 of the Labor Code) for preventing the transmission of HIV, hepatitis B, and other blood-borne pathogens in health care settings. As necessary to encourage appropriate consistency in the implementation of this subdivision, the board shall consult with the Medical Board of

California, the Board of Podiatric Medicine, the Dental Board of California, the Board of Registered Nursing, and the Board of Vocational Nursing and Psychiatric Technicians.

(2) The board shall seek to ensure that licensees are informed of their responsibility to minimize the risk of transmission of blood-borne infectious diseases from health care provider to patient, from patient to patient, and from patient to health care provider, and are informed of the most recent scientifically recognized safeguards for minimizing the risks of transmission.

SEC. 8. Section 2570.29 is added to the Business and Professions Code, to read:

2570.29. In addition to other acts constituting unprofessional conduct within the meaning of this chapter, it is unprofessional conduct for a person licensed under this chapter to do any of the following:

(a) Obtain or possess in violation of law, or prescribe, or, except as directed by a licensed physician and surgeon, dentist, optometrist, or podiatrist, to administer to himself or herself, or furnish or administer to another, any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code or any dangerous drug or dangerous device as defined in Section 4022.

(b) Use to an extent or in a manner dangerous or injurious to himself or herself, to any other person, or to the public, or that impairs his or her ability to conduct with safety to the public the practice authorized by his or her license, of any of the following:

(1) A controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code.

(2) A dangerous drug or dangerous device as defined in Section 4022.

(3) Alcoholic beverages.

(c) Be convicted of a criminal offense involving the prescription, consumption, or self-administration of any of the substances described in subdivisions (a) and (b) of this section, or the possession of, or falsification of a record pertaining to, the substances described in subdivision (a) of this section, in which event the record of the conviction is conclusive evidence thereof.

(d) Be committed or confined by a court of competent jurisdiction for intemperate use of any of the substances described in subdivisions (a) and (b) of this section, in which event the court order of commitment or confinement is prima facie evidence of the commitment or confinement.

(e) Falsify, or make grossly incorrect, grossly inconsistent, or unintelligible entries in any hospital or patient record, or any other record, pertaining to the substances described in subdivision (a) of this section.

SEC. 9. Section 2570.30 is added to the Business and Professions Code, to read:

2570.30. The board shall retain jurisdiction to proceed with any investigation, action or disciplinary proceeding against a license, or to render a decision suspending or revoking a license, regardless of the expiration, lapse, or suspension of the license by operation of law, by order or decision of the board or a court of law, or by the voluntary surrender of a license by the licensee.

SEC. 10. Section 2570.31 is added to the Business and Professions Code, to read:

2570.31. If a license is suspended, the holder may not practice occupational therapy during the term of suspension. Upon the expiration of the term of suspension, the license shall be reinstated and the holder entitled to resume practice under any remaining terms of the discipline, unless it is established to the satisfaction of the board that the holder of the license practiced in this state during the term of suspension. In this event, the board may, after a hearing on this issue alone, revoke the license.

SEC. 11. Section 2570.32 is added to the Business and Professions Code, to read:

2570.32. (a) A holder of a license that has been revoked, suspended, or placed on probation, may petition the board for reinstatement or modification of a penalty, including reduction or termination of probation, after a period not less than the applicable following minimum period has elapsed from either the effective date of the decision ordering that disciplinary action, or, if the order of the board or any portion of it was stayed, from the date the disciplinary action was actually implemented in its entirety. The minimum periods that shall elapse prior to a petition are as follows:

(1) For a license that was revoked for any reason other than mental or physical illness, at least three years.

(2) For early termination of probation scheduled for three or more years, at least two years.

(3) For modification of a penalty, reinstatement of a license revoked for mental or physical illness, or termination of probation scheduled for less than three years, at least one year.

(4) The board may, in its discretion, specify in its disciplinary order a lesser period of time, provided that the period shall not be less than one year.

(b) The petition submitted shall contain any information required by the board, which may include a current set of fingerprints accompanied by the fingerprinting fee.

(c) 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.

(d) The board itself shall hear the petition and the administrative law judge shall prepare a written decision setting forth the reasons supporting the decision.

(e) The board may grant or deny the petition, or may impose any terms and conditions that it reasonably deems appropriate as a condition of reinstatement or reduction of penalty.

(f) The board may refuse to consider a petition 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.

(g) No petition shall be considered while there is an accusation or petition to revoke probation pending against the petitioner.

SEC. 12. Section 5094 of the Business and Professions Code, as added by Section 19 of Chapter 704 of the Statutes of 2001, is amended to read:

5094. (a) In order for education to be qualifying, education shall meet the standards described in subdivision (b) or (c) of this section.

(b) At a minimum, education must be from a degree-granting university, college, or other institution of learning accredited by a regional or national 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, et seq.).

(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 credential 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. 13. Section 5094 of the Business and Professions Code, as added by Section 22 of Chapter 718 of the Statutes of 2001, is amended 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 degree-granting university, college, or other institution of learning accredited by a regional or national 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, et seq.).

(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 credential 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. 14. Section 8020 of the Business and Professions Code, as added by Section 3 of Chapter 616 of the Statutes of 2001, is amended to read:

8020. Any person over the age of 18 years, who has not committed any acts or crimes constituting grounds for the denial of licensure under Sections 480, 8025, and 8025.1, who has a high school education or its equivalent as determined by the board, and who has satisfactorily passed an examination under any regulations that the board may prescribe, shall be entitled to a certificate and shall be styled and known as a certified shorthand reporter. No person shall be admitted to the examination without first presenting satisfactory evidence to the board that the applicant has obtained one of the following:

(a) One year of experience in making verbatim records of depositions, arbitrations, hearings, or judicial or related proceedings by means of written symbols or abbreviations in shorthand or machine shorthand writing and transcribing these records.

(b) A verified certificate of satisfactory completion of a prescribed course of study in a recognized court reporting school or a certificate from the school that evidences an equivalent proficiency and the ability to make a verbatim record of material dictated in accordance with regulations adopted by the board contained in Title 16 of the California Code of Regulations.

(c) A certificate from the National Court Reporters Association demonstrating proficiency in machine shorthand reporting.

(d) A passing grade on the California state hearing reporters examination.

(e) A valid certified shorthand reporters certificate or license to practice shorthand reporting issued by a state other than California

whose requirements and licensing examination are substantially the same as those in California.

SEC. 15. Section 8020 of the Business and Professions Code, as added by Section 4 of Chapter 616 of the Statutes of the 2001, is repealed.

SEC. 16. Section 8022 of the Business and Professions Code is amended to read:

8022. (a) Each applicant for a certificate under this chapter shall file an application with the executive officer, on a form as prescribed by the board. The last date to file an application shall be a set number of days as established by the board's regulations. The application shall be accompanied by the required fee. For purposes of determining the date upon which an application is deemed filed with the executive officer, the date of postmark as affixed by the United States Postal Service, or the date certified by a bona fide private courier service on the envelope containing the application shall control.

(b) Nothing in this section shall be construed to limit the board's authority to seek from any applicant any other information pertinent to the background, education, and experience of the applicant that may be deemed necessary in order to evaluate the applicant's qualifications and fitness for licensure.

SEC. 17. Section 8028 of the Business and Professions Code is amended to read:

8028. (a) For the purposes of determining the necessity for the board to register shorthand reporting entities and subject those entities to its discipline and oversight, the board shall, until January 1, 2004, be authorized to examine, evaluate, and investigate complaints against shorthand reporting entities. Nothing in this subdivision shall be construed to grant the board any authority to discipline or sanction shorthand reporting entities that is not otherwise permitted by law.

(b) For purposes of this article, a ''shorthand reporting entity'' is an entity or person, including partnerships, unincorporated associations, and limited liability companies, that holds itself out as a deposition agency, offers a booking or billing service for certified shorthand reporters, or in any manner whatsoever acts as an intermediary for a person, entity, or organization that employs, hires, or engages the services of any person licensed as a certified shorthand reporter. This article does not apply to any department or agency of the state that employs hearing reporters.

(c) The board may examine, evaluate, and investigate complaints pursuant to subdivision (a) beginning January 1, 2001, and continuing until no later than January 1, 2004.

SEC. 18. Section 8028.2 of the Business and Professions Code is amended to read:

8028.2. Based on the information gathered pursuant to Section 8028, the board shall, on or before January 1, 2004, submit a report to the Legislature, including recommendations on the necessity for the board to register shorthand reporting entities, as defined in subdivision (b) of Section 8028. If the report recommends the registration of shorthand reporting entities, the report shall include:

(a) A description of the problem that establishing the new registration requirement would address, including the specific evidence of the necessity for the state to address the problem.

(b) The reasons this proposed registration requirement was selected to address this problem, including the full range of alternatives considered and the reason each of these other alternatives was not selected.

(c) The specific public benefit or harm that would result from the establishment of the proposed registration requirements, the specific manner in which the registration requirements would achieve this public benefit, and the specific standards of performance that shall be used in reviewing the subsequent operation of the shorthand reporting entities.

(d) The specific source or sources of revenue and funding the board will utilize to regulate the newly registered entities in order to achieve its mandate.

SEC. 19. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

To authorize the appointment of interim executive officers, to create necessary funding for the peer review process study, to extend reporting deadlines regarding the peer review process and regarding complaints to the Court Reporters Board prior to the expiration of those deadlines, to expand and define the California Board of Occupational Therapy's ability to enforce the provisions of its licensing law and alter its application requirements, and to change education qualification requirements as soon as possible, it is necessary that this act take effect immediately.

CHAPTER 1080

An act to amend Sections 45344.5 and 45361.5 of, and to add Article 6.5 (commencing with Section 45330) to Chapter 5 of Part 25 of, the Education Code, relating to paraprofessionals.

[Approved by Governor September 29, 2002. Filed with Secretary of State September 29, 2002.]

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

SECTION 1. The Legislature finds and declares that California is a major participant in the Title I program under the recently enacted federal legislation, No Child Left Behind Act of 2001 (P.L. 107-110). Since 1982, paraprofessionals in California public schools have been assessed for their proficiency and ability to assist teachers and certificated personnel in teaching reading, writing, and mathematics. This legislation is intended to ensure that state law conforms with federal law regarding the testing requirements for paraprofessionals supported by federal Title I funds.

SEC. 2. Article 6.5 (commencing with Section 45330) is added to Chapter 5 of Part 25 of the Education Code, to read:

Article 6.5. Paraprofessionals

45330. (a) As used in this section, a paraprofessional means a person who assists classroom teachers and other certificated personnel in instructing reading, writing, and mathematics. A paraprofessional includes an instructional aide as defined in subdivision (a) of Section 45343 and a teacher aide as described in Section 45360.

(b) A paraprofessional shall perform only duties that, in the judgement of the certificated personnel to whom the instructional aide is assigned, may be performed by a person not licensed as a classroom teacher. These duties shall not include assignment of grades to pupils.

(c) Pursuant to the federal No Child Left Behind Act of 2001 (P.L. 107-110), a local education agency that receives funding from Title 1 of that act shall ensure that every paraprofessional hired on or after January 8, 2002, who is supported by those Title 1 funds and who assists in instruction has demonstrated at least one of the following in addition to any other requirements under that act:

(1) Completion of at least two years of study at an institution of higher education.

(2) Possession of an associate's degree or higher.

(3) Through a local or state assessment, that is appropriate to the responsibilities to be assigned to the paraprofessional, knowledge of, and ability to assist in, instructing reading, writing, and mathematics.

(d) Except as provided in subdivision (h), a paraprofessional hired prior to January 8, 2002, who is supported by federal funds from Title I of the federal No Child Left Behind Act of 2001 (P.L. 107-110) shall meet the requirements of subdivision (c) no later than January 8, 2006.

(e) No person shall be initially assigned to assist in instruction as a paraprofessional in kindergarten and grades 1 to 12, inclusive, unless the person has demonstrated proficiency in reading, writing, and

mathematics skills up to or exceeding that required by the employing district for high school seniors pursuant to subdivisions (a) and (f) of Section 51220 if the employing district educates high school students.

(f) If the employing district is an elementary school district, the paraprofessional shall demonstrate proficiency in reading, writing, and mathematics skills up to or exceeding that required for high school seniors pursuant to subdivisions (a) and (f) of Section 51220 in the high school district that includes all or the largest portion of the elementary district.

(g) In establishing the educational qualifications or in developing a proficiency exam, a school district shall align the qualifications and proficiency exams pursuant to paragraph (3) of subdivision (c).

(h) A paraprofessional who is supported by federal funds from Title I of the federal No Child Left Behind Act of 2001 (P.L. 107-110) and who meets either of the following conditions is exempt from the requirements described in paragraphs (1) to (3), inclusive, of subdivision (c):

(1) The paraprofessional is proficient in English and a language other than English and provides services primarily to enhance participation of pupils by acting as a translator.

(2) The paraprofessional's duties consist solely of conducting parental involvement activities.

(i) A paraprofessional who was hired on or before January 1, 2003, and who has previously demonstrated, through a local assessment, knowledge of, and an ability to assist in, instructing reading, writing, and mathematics, is deemed to have met the proficiency exam requirements of paragraph (3) of subdivision (c).

(j) A school district may use an existing proficiency assessment or may develop a new proficiency assessment to meet the requirements of paragraph (3) of subdivision (c).

(k) Pursuant to the federal No Child Left Behind Act of 2001, a local education agency may use a portion of the funds from that act for staff development for paraprofessionals, to the extent that those funds are appropriated in the annual Budget Act for this purpose.

SEC. 3. Section 45344.5 of the Education Code is amended to read:

45344.5. (a) No person shall be initially assigned to assist in instruction as an instructional aide unless the person has demonstrated proficiency in basic reading, writing, and mathematics skills pursuant to Section 45330.

(b) A school district may charge prospective aides taking the district's proficiency test a fee to fund the costs incurred by the district in giving the test. This fee may be subject to negotiation between the district and the exclusive representative of instructional aides, but in no event shall the fee exceed seven dollars ($7).

(c) An instructional aide who passes a district proficiency test as required by this section, transfers to another district, and is employed in the same capacity shall be considered to have met the proficiency standards for purposes of this section unless the district to which he or she has transferred determines that the test taken by the aide is not comparable to the standards required by the employing district.

SEC. 4. Section 45361.5 of the Education Code is amended to read:

45361.5. (a) No person shall be initially assigned to assist in instruction for work as an aide for instructional purposes in kindergarten and grades 1 to 12, inclusive, unless the person has demonstrated proficiency in basic reading, writing, and mathematics skills pursuant to Section 45330.

(b) As used in this section, ''initially assigned'' means any assignment, including substitute, temporary, probationary, or permanent employment, to assist in instruction as an aide for instructional purposes.

(c) A school district may charge a fee to prospective aides taking the district proficiency test pursuant to the requirements of this section to fund the costs incurred by the district in giving the test. This fee may be subject to negotiation between the district and the exclusive representative of instructional aides, but in no event shall the fee exceed seven dollars ($7).

(d) The school district governing board, at a public meeting, may grant an exemption from this requirement to any person, for a period of one year, if the person is to be assigned as a bilingual-crosscultural aide and the governing board determines that there is no other person available to serve in the same capacity. Upon or prior to the expiration of the one-year period, the bilingual-crosscultural aide shall be required to take and pass the basic skills test required by this section. A bilingual-crosscultural aide who has not demonstrated his or her basic skills proficiency through these means may not be compensated for work as a bilingual-crosscultural aide. A bilingual-crosscultural aide may only be granted one exemption from this requirement. The authority of district governing boards to grant these exemptions shall cease on June 30, 1985.

(e) An aide who passes a district proficiency test as required by this section who transfers to another district and is employed in the same capacity, shall be considered to have met the proficiency standards for purposes of this section unless the district to which he or she has transferred determines that the test taken by the aide is not comparable to the standards required by the employing district.

(f) An aide who passes a district proficiency test, as required by this section, and who is reassigned to another school or program in the district and is employed in the same capacity, shall be considered to have met the state basic skills proficiency test requirement.

SEC. 5. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act, within the meaning of Section 17556 of the Government Code.

CHAPTER 1081

An act to amend Sections 94100, 94110, 94140, 94147, and 94154 of, and to add and repeal Article 9 (commencing with Section 94215) of Chapter 2 of Part 59 of, the Education Code, relating to educational facilities, and making an appropriation therefor.

[Approved by Governor September 29, 2002. Filed with Secretary of State September 29, 2002.]

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

SECTION 1. Section 94100 of the Education Code is amended to read:

94100. It is the purpose of this chapter to accomplish all of the following:

(a) To give this and future generations of youth the fullest opportunity to learn and develop their intellectual and mental capacities by providing private institutions of higher education within the state with an additional means by which to expand, enlarge, and establish dormitory, academic, and related facilities, to finance those facilities, and to refinance existing facilities.

(b) To provide private and public institutions of higher education within the state with an additional means to assist students in financing their costs of attendance.

(c) To develop student, faculty, and staff housing on or near public and participating private institutions of higher education through the use of agreements with participating nonprofit entities.

(d) To make grants to private institutions of higher education to assist students in preparing for higher education and college entrance, pursuant to Article 9 (commencing with Section 94215).

SEC. 2. Section 94110 of the Education Code is amended to read:

94110. As used in this chapter, the following words and terms have the following meanings, unless the context indicates or requires another or different meaning or intent:

(a) ''Authority'' means the California Educational Facilities Authority created by this chapter or any board, body, commission, department, or officer succeeding to the principal functions thereof or to whom the power conferred upon the authority by this chapter is given by law.

(b) ''Bond'' means bonds, notes, debentures, or other securities of the authority issued pursuant to this chapter.

(c) ''Cost,'' as applied to a project or portion thereof financed under this chapter, embraces all or any part of the cost of construction and acquisition of all lands, structures, real or personal property, rights, rights-of-way, franchises, easements, and interests acquired or used for a project, the cost of demolishing or removing any buildings or structures on land so acquired, including the cost of acquiring any lands to which the buildings or structures may be moved, the cost of all machinery and equipment, financing charges, interest prior to, during, and for a period after completion of, the construction as determined by the authority, provisions for working capital, reserves for principal and interest and for extension, enlargements, additions, replacements, renovations and improvements, the cost of engineering, financial and legal services, plans, specifications, studies, surveys, estimates, administrative expenses, and other expenses necessary or incident to determining the feasibility of constructing any project or incident to the construction or acquisition or financing thereof.

(d) ''Dormitory'' means a housing unit with necessary and usual attendant and related facilities and equipment.

(e) ''Educational facility'' means a structure suitable for use as a dormitory, dining hall, student union, administration building, academic building, library, laboratory, research facility, classroom, health care facility (including for an institution of higher education that maintains and operates a school of medicine, structures or facilities providing or designed to provide services as a hospital or clinic, whether the hospital or clinic is operated directly by the institution of higher education or by a separate nonprofit corporation, the member or members of which consist of the educational institution or the members of its governing body), faculty and staff housing, and parking, maintenance, storage, or utility facilities and other structures or facilities related thereto or required or useful for the instruction of students or the conducting of research or the operation of an institution for higher education, and the necessary and usual attendant and related facilities and equipment, but does not include any facility used or to be used for sectarian instruction or as a place for religious worship or any facility used or to be used primarily in connection with any part of the program of a school or department of divinity.

(f) ''Faculty and staff housing'' means a residential unit owned by a participating college or participating nonprofit entity for use by an individual holding a faculty appointment or a staff position at a public university, public college, or participating college.

(g) ''Participating nonprofit entity'' means an entity within the meaning of paragraph (3) of subsection (c) of Section 501 of Title 26 of the United States Code that, pursuant to this chapter for the purpose of owning student, faculty, or staff housing, as approved by, and for participation with, the authority, undertakes the financing and construction or acquisition of student, faculty, or staff housing, on real property owned or leased by the entity, for the benefit of a public college, public university, or participating private college. The authority may determine any additional qualifications of a participating nonprofit entity through regulations or guidelines.

(h) ''Participating private college'' or ''participating college'' means a private college that neither restricts entry on racial or religious grounds nor requires all students gaining admission to receive instruction in the tenets of a particular faith, and that, pursuant to this chapter, participates with the authority in undertaking the financing and construction or acquisition of a project.

(i) ''Private college'' means an institution for higher education other than a public college, situated within the state and that, by virtue of law or charter, is a nonprofit private or independent degree-granting educational institution that is regionally accredited and empowered to provide a program of education beyond the high school level.

(j) (1) ''Project'' means a dormitory or an educational facility, faculty or staff housing, or any combination thereof, or any function concerning student loans, or interests therein, as determined by the authority.

(2) For a participating nonprofit entity, ''project'' means the construction or acquisition of student housing or faculty and staff housing. The authority, in consultation with the top administrative officials and the participating nonprofit entity, shall develop and adopt regulations to ensure, to the greatest extent practicable, that each project involving a participating nonprofit entity is used to house students, faculty, or staff of the participating private college, public college, or public university. The student, faculty, or staff housing shall meet all of the following criteria:

(A) Upon completion or acquisition of the project, the project will be owned by a participating nonprofit entity and located on real property owned, or leased by, that entity.

(B) The top administrative official of the public university, public college, or participating private college that the project is intended to

benefit, verifies the need for housing and financing assistance in a specific area pursuant to subparagraph (D).

(C) The project is monitored on an annual basis by the authority to ensure that it meets the requirements of subparagraph (E) and all other regulatory agreements entered into by the authority.

(D) The project is located within a five-mile radius of the boundary of a campus or satellite center of the public college, public university, or participating private college that the project is intended to benefit. The participating nonprofit entity may request approval from the top official of the institution for a project that is located outside the five-mile radius, provided that all of the following criteria are met:

(i) There are no available and feasible sites within the five-mile radius.

(ii) The project is near a mass transit destination.

(iii) The time required to commute from campus to the mass transit destination, as estimated by the top administrative official, typically does not exceed 30 minutes.

(E) (i) The project includes and maintains for 40 years a restriction to the grant deed on the real property on which the student or faculty and staff housing is to be located. The grant deed shall accomplish all of the following:

(I) Give the public college, public university, or participating private college that the project is intended to benefit the right, but not the obligation, to purchase the property at fair market value.

(II) Ensure that students, faculty, or staff of the affected campus will have first right of refusal to all available units.

(III) Require that, to the greatest extent feasible, at least 50 percent of student residents will meet the criteria for need-based financial assistance, as determined by the top administrative official of the affected campus.

(IV) Require that all contracts for construction and renovation of the proposed project shall be subject to, and comply with the provisions referenced in, Section 10128 of the Public Contract Code.

(ii) For the purposes of this subparagraph, the authority shall, through regulation or rule, define ''student'' and ''faculty,'' taking into consideration enrollment status requirements and employment status requirements. The definitions of ''student'' and ''faculty'' may be different for each participating campus.

(k) ''Public college'' means a community college.

(*l*) ''Public university'' means any campus of the University of California or the California State University, or the Hastings College of the Law.

(m) ''Student housing'' means a residential unit owned by a participating nonprofit entity, and located on real property owned by that

entity, for use by an individual enrolled at a public college, public university, or participating private college.

(n) ''Student loan'' means any loan having terms and conditions acceptable to the authority that is made to finance or refinance the costs of attendance at any private college or a public college and that is approved by the authority, if the loan is originated pursuant to a program that is approved by the authority.

(o) ''Top administrative official'' means the chancellor in the case of a campus of the University of California, the dean in the case of the Hastings College of the Law, the trustees in the case of a campus of the California State University, the president in the case of a campus of the California Community Colleges, or the president or highest ranking official in the case of a participating private college.

SEC. 3. Section 94140 of the Education Code is amended to read:

94140. The authority shall have power to do all of the following:

(a) Adopt bylaws for the regulation of its affairs and the conduct of its business.

(b) Adopt and have an official common seal and alter it at pleasure.

(c) Sue and be sued in its own name, and plead and be impleaded.

(d) Borrow money, issue bonds and notes and other obligations of the authority, and provide for the rights of the holders thereof as provided in this chapter.

(e) Acquire, lease as lessee, hold, and dispose of real and personal property or any interest therein, in the exercise of its powers and the performance of its duties under this chapter.

(f) Acquire, in the name of the authority by purchase or otherwise, on the terms and conditions and in the manner as it deems proper, any land or interest therein and other property that it determines is reasonably necessary for any project, including any lands held by any county, municipality, or other governmental subdivision of the state; and to hold and use the same and to sell, convey, lease, or otherwise dispose of property so acquired, no longer necessary for the authority's purposes.

(g) Receive and accept, from any federal or other public agency or governmental entity, grants or loans for or in aid of the acquisition or construction of any project, and to receive and accept aid or contributions from any other source, of either money, property, labor, or other things of value, to be held, used, and applied only for the purposes for which the grants, loans, and contributions may be made.

(h) Prepare, or cause to be prepared plans, specifications, designs, and estimates of costs for the construction and equipment of projects for participating colleges and participating nonprofit entities under this chapter, and from time to time to modify those plans, specifications, designs, or estimates.

(i) By contract or contracts or by its own employees to construct, acquire, reconstruct, rehabilitate and improve, and furnish and equip, projects for participating colleges and participating nonprofit entities.

(j) Employ consulting engineers, architects, accountants, construction and financial experts, superintendents, and other employees and agents that may be necessary in its judgment and to fix their compensation.

(k) Determine the location and character of any project to be undertaken pursuant to this chapter, and construct, reconstruct, repair, lease, as lessee or lessor, the same; enter into contracts for any or all of those purposes; and designate a participating private college or participating nonprofit entity as its agent to determine the location and character of a project undertaken by the participating private college or participating nonprofit entity under this chapter and, as the agent of the authority, construct, reconstruct, maintain, repair, operate, lease, as lessee or lessor, and regulate the same, and, as agent of the authority, to enter into contracts for any and all of those purposes including contracts for the management and operation of the project.

(*l*) Establish rules and regulations for the use of a project or any portion thereof and to designate a participating private college or participating nonprofit entity as its agent to establish rules and regulations for the use of a project undertaken by the participating private college or participating nonprofit entity.

(m) Generally establish, revise from time, to time and charge and collect, rates, rents, fees, and other charges for the use of and for the services furnished or to be furnished by a project or any portion thereof and contract with holders of its bonds and with any other person, party, association, corporation, or other body, public or private, in respect thereof.

(n) Enter into any and all agreements or contracts, execute any and all instruments, and do and perform any and all acts or things necessary, convenient, or desirable for the purposes of the authority or to carry out any power expressly given in this chapter.

(o) Invest any moneys held in reserve or sinking funds, or any moneys not required for immediate use or disbursement, at the discretion of the authority, in obligations that are authorized by law for the investment of trust funds in the custody of the Treasurer.

(p) Charge, and equitably apportion among participating private colleges and participating nonprofit entities, its administrative costs and expenses incurred in the exercise of the powers and duties conferred by this chapter.

(q) Finance, directly or through an intermediary, or purchase or take assignments of, or make commitments to finance, directly or through an intermediary, or purchase or to take assignments of, student loans, to

contract in advance for those student loans, and to contract in advance for that financing, purchase, or assignment, and to pay any amounts payable in respect thereto. A student loan shall be eligible for financing or purchase by the authority or for assignment hereunder regardless of the repayment status of the loan. Any pledge made to secure authority financing for student loan project purposes shall be valid and binding from the time the pledge is made. The revenues and receipts of property or interest in the property pledged and thereafter received by the authority, a participating college or public institution of higher education, a servicer, a trustee, or a custodian shall immediately be subject to the lien of the pledge without any physical delivery thereof or further act, and the lien of any pledge shall be valid and binding against all parties having claims of any kind in tort, contract, or otherwise against the authority, participating college or public institution of higher education, servicer, trustee, or custodian irrespective of whether the parties have notice thereof. Neither the resolution nor any other instrument by which a pledge is created need be recorded.

(r) Hold or invest in student loans, create pools of student loans, and sell bonds bearing interest on a taxable or tax-exempt basis or other interests backed by the pools of student loans.

(s) Contract or otherwise provide for the distribution, processing, origination, purchase, sale, servicing, securing, and collection of student loans, the payment of fees, charges, and administrative expenses in connection therewith, and the funding of reserves required or provided for in any resolution authorizing, or trust agreement securing, authority financing for student loan purposes.

(t) Assist in providing support to participating colleges or participating nonprofit entities to enhance the market acceptance of potential bond issues by the authority, including securing probable or actual credit ratings from nationally recognized bond rating agencies, providing or obtaining liquidity or credit enhancement, providing or securing bond reserve funds, performing any other action deemed necessary by the authority, and incurring necessary expenses, payable from available authority funds, for any of these purposes.

SEC. 4. Section 94147 of the Education Code is amended to read:

94147. (a) The authority may fix, revise, charge, and collect rates, rents, fees, and charges for the use of and for the services furnished or to be furnished by each project, and may contract with any person, partnership, association or corporation, or other body, public or private, in respect thereof. These rates, rents, fees, and charges shall be fixed and adjusted in respect of the aggregate of rents, rates, fees, and charges from the project so as to provide funds sufficient with other revenues or moneys, if any, to accomplish all of the following:

(1) Pay the cost of maintaining, repairing, and operating the project and each and every portion thereof, to the extent that the payment of that cost has not otherwise been adequately provided for.

(2) Pay the principal of, and the interest on, outstanding bonds of the authority issued in respect of that project as the same shall become due and payable.

(3) Create and maintain reserves required or provided for in any resolution authorizing, or trust agreement securing, bonds of the authority.

(b) (1) The rates, rents, fees, and charges referenced in subdivision (a) are not subject to supervision or regulation by any department, commission, board, body, bureau, or agency of this state other than the authority. A sufficient amount of the revenues derived in respect of a project, except a part of those revenues that is necessary to pay the cost of maintenance, repair, and operation and to provide reserves for renewals, replacements, extensions, enlargements, and improvements as may be provided for in the resolution authorizing the issuance of any bonds of the authority or in the trust agreement securing the same, shall be set aside at regular intervals provided in the resolution or trust agreement in a sinking or other similar fund.

(2) The fund established pursuant to paragraph (1) is pledged to, and charged with, the payment of the principal of and the interest on, the bonds as the same shall become due, and the redemption price or the purchase price of bonds retired by call or purchase as therein provided.

(3) The pledge required by paragraph (2) shall be valid and binding from the time when the pledge is made. The rates, rents, fees and charges and other revenues or other moneys so pledged and thereafter received by the authority shall immediately be subject to the lien of the pledge without any physical delivery thereof or further act, and the lien of that pledge shall be valid and binding as against all parties having claims of any kind in tort, contract, or otherwise against the authority, irrespective of whether the parties have notice thereof. Neither the resolution nor any trust agreement by which a pledge is created need be filed or recorded except in the records of the authority.

(4) The use and disposition of moneys to the credit of the sinking or other similar fund shall be subject to the resolution authorizing the issuance of those bonds or of that trust agreement. Except as may otherwise be provided in that resolution or that trust agreement, the sinking or other similar fund shall be a fund for all of those bonds issued to finance projects at a participating college, or bonds issued to finance a project of a participating nonprofit entity, without distinction or priority of one over another.

(5) The authority, in the resolution or trust agreement, may provide that the sinking or other similar fund shall be either of the following:

(A) The fund for a particular project at a participating college and for the bonds issued to finance a particular project and may, additionally, permit and provide for the issuance of bonds having a subordinate lien in respect of the security herein authorized to other bonds of the authority and, in this case, the authority may create separate sinking or other similar funds in respect of those subordinate lien bonds.

(B) The fund for a particular project of a participating nonprofit entity.

SEC. 5. Section 94154 of the Education Code is amended to read:

94154. The State of California pledges and agrees with the holders of the bonds, notes, and other obligations issued pursuant to authority contained in this chapter, and with those parties who may enter into contracts with the authority pursuant to the provisions of this chapter, that the state will not limit, alter, or restrict the rights hereby vested in the authority and the participating private colleges and participating nonprofit entities to maintain, construct, reconstruct, and operate any project as defined in this chapter or to establish and collect the rents, fees, receipts, or other charges as may be convenient or necessary to produce sufficient revenues to meet the expenses of maintenance and operation thereof and to fulfill the terms of any agreements made with the holders of bonds authorized by this chapter, and with the parties who may enter into contracts with the authority pursuant this chapter, or in any way impair the rights or remedies of the holders of those bonds or those parties until the bonds, together with interest thereon, are fully paid and discharged and the contracts are fully performed on the part of the authority. The authority as a public body corporate and politic may include the pledge herein made in its bonds and contracts.

SEC. 6. Article 9 (commencing with Section 94215) is added to Chapter 2 of Part 59 of the Education Code, to read:

Article 9. Grants

94215. The authority shall have power to make grants in aid to any private college in accordance with an agreement between the authority and a private college.

94215.3. Grants may be made to enable a private college to provide a program of academic assistance and services to pupils attending a qualified school, as defined in Section 94215.9, in order to inform the pupils of the benefits of, and the requirements for, higher education; prepare these pupils for college entrance; or to provide programs, such as academic enrichment and mentoring programs, that advance the academic standing of those pupils. The Legislature finds and declares that these grants will provide a benefit to the residents of the state.

94215.5. The authority is authorized to incur necessary expenses, payable from available funds, to provide grants for the purposes of this article, and the funds provided by the private college may be fully or partly matched by funds provided by the authority.

94215.7. (a) The authority, in consultation with representatives of private colleges, qualified schools, and other appropriate parties, shall develop selection criteria and a process for awarding grants under this article, which shall include all of the following:

(1) The extent to which the program to be funded will provide academic assistance, guidance in college admissions, or will otherwise contribute to the expansion of postsecondary educational opportunities for low- and very low income students.

(2) The extent to which the program, if it is already in existence, has a demonstrated record of success in providing academic assistance, guidance in college admissions, or in otherwise expanding the educational opportunities of students.

(3) If the program to be funded is new, the extent to which the applicant has demonstrated that the program is feasible, ready to be implemented, and well-structured to provide academic assistance, guidance in college admissions, or to expand the educational opportunities of students at qualified schools.

(4) The extent to which the program will serve qualified schools in geographic areas that are not currently being served by similar programs.

(5) The extent to which the applicant has demonstrated its commitment to providing need-based financial assistance to students who otherwise could not afford to attend the applicant's institution.

(6) The extent to which the applicant has committed its own funds, or funds obtained from other sources, to the program.

(7) The total amount of funds appropriated and available for purposes of this section.

(b) In no event shall a grant to finance a program exceed the total cost of the program, as determined by the applicant and approved by the authority. Grants shall be awarded only to applicants that have certified to the authority that all requirements established by the authority for grantees have been met. The authority shall not award more than a total of two million dollars ($2,000,000) in grants under this article, nor shall it award more than two hundred fifty thousand dollars ($250,000) to any applicant.

(c) All programs that are awarded grants shall be implemented within a reasonable period of time, to be determined by the authority. The authority shall not release any funds until the applicant demonstrates, to the authority's satisfaction, that the program is ready to be implemented. If the authority determines that the applicant has failed to implement the

program under the terms specified in awarding the grant, the authority may require remedies, including the return of all or a portion of the grant.

(d) Any applicant receiving a grant under this section shall commit to using the grant funds for the purposes for which the grant was awarded.

94215.9. For purposes of this article, ''qualified school'' means any comprehensive school providing instruction in any of grades 7 to 12, inclusive, as determined by the authority, which shall take into consideration whether the school is in a low- or very low income area and whether, where applicable, the percentage of pupils who graduate from the school and are eligible for admission to the California State University or the University of California is below the statewide average according to the most recent information from the California Postsecondary Education Commission.

94216. Commencing with the 2004 calendar year, the authority shall annually submit to the Legislature a report setting forth the amount of funds awarded pursuant to this article in the preceding calendar year, the amount of each grant awarded, and a description of each of the outreach programs to which funding has been awarded under this article.

94216.9. The authority may adopt regulations to implement the grant program described in this article 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 any emergency regulation pursuant to this section filed with the Office of Administrative Law on or before July 1, 2003, 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, any emergency regulation adopted pursuant to this section shall remain in effect for no more than 360 days.

94216.11. This article shall remain in effect only until January 1, 2009, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2009, deletes or extends that date.

SEC. 7. The Legislature finds and declares that the appropriation made by Section 6 of this act is a one-time appropriation from existing resources.

CHAPTER 1082

An act to amend Sections 76000, 76100, and 76101 of, to amend and renumber Section 68073 of, to add Section 76223 to, to add Chapter 4.2

(commencing with Section 69202) to Title 8 of, and to add Chapter 5.7 (commencing with Section 70301) to Title 8 of, the Government Code, relating to court facilities.

[Approved by Governor September 29, 2002. Filed with Secretary of State September 29, 2002.]

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

SECTION 1. The Legislature finds and declares the following:

(a) The Lockyer-Isenberg Trial Court Funding Act (hereafter act) provides that court operations are to be funded by the state, rather than primarily by the counties, as they had been prior to the enactment of the act. Although the counties continue to contribute to trial court funding through maintenance-of-effort obligations, the restructuring of court funding ends a dual system of county and state funding and provides a more stable and consistent funding source for trial court operations. Counties, however, continue to bear primary responsibility for trial court facilities.

(b) The act also created the Task Force on Court Facilities (hereafter task force) to deal with the question of facilities that has been left as the responsibility of the counties by the act. The purpose of this act is to transfer the responsibility for trial court facilities funding and operation to the state in a manner generally consistent with the recommendations of the task force.

(c) The overarching recommendation of the task force is that responsibility for trial court facilities funding and operation be shifted from the counties to the state. The primary reasons for that recommendation are as follows:

(1) The judicial branch of government is now wholly responsible for its programs and operations, with the exception of trial court facilities. The judiciary should have the responsibility for all of its functions related to its operations and staff, including facilities.

(2) Uniting responsibility for operations and facilities increases the likelihood that operational costs will be considered when facility decisions are made, and enhances economical, efficient, and effective court operations.

(3) The state, being solely responsible for creating new judicial positions, drives the need for new court facilities.

(4) Equal access to justice is a key underpinning of our society and the rule of law. It is also a paramount goal of the Judicial Council, the policymaking body of the judicial branch. The state can best ensure uniformity of access to all court facilities in California.

(d) Specific provisions for carrying out this transfer of responsibility for trial court facilities from the counties to the state are contained in this act. The guiding principles for the transition are as follows:

(1) The transfer shall occur as expeditiously as possible and be completed by June 30, 2007.

(2) The transfer shall be negotiated on a building-by-building basis between the state and the counties. Negotiations shall be consummated in an agreement governing each facility.

(3) The Judicial Council shall represent the state's interests in negotiations with counties.

(4) Generally, fee title to court facilities shall be transferred to the state when possible. However, in the case of joint-use facilities or historic facilities, title may remain with a county as provided for in the governing agreement. In those cases, the principal guiding negotiations shall be the preservation of the respective equity interests of the county and the state in a joint-use or historic facility.

(5) Generally, the Judicial Council and the county shall agree to the transfer of responsibility for each court facility in that county unless transfer of responsibility is rejected.

(6) Counties shall not be entitled to compensation for any equity value of court facilities transferred to the state.

(7) Generally, the state shall be expected to accept responsibility for facilities in an as-is condition. However, the state may reject facilities that are seriously deficient, and require counties to continue financial responsibility for those facilities.

(8) Counties shall provide funding for facilities operation and maintenance costs based on historic funding patterns through a county facilities payment to the state. An amount shall be calculated for each facility and that amount shall be agreed to prior to the transfer of responsibility for the facility to which it pertains. This funding shall be provided in perpetuity, but not indexed to increase with inflation over time.

(9) A method shall be created to resolve disputes between the Judicial Council and a county if those parties fail to reach agreement for a facility or the appropriate calculation of the county facilities payment amount.

(e) The same responsibility for appellate court facilities, including the responsibility for planning and construction of new facilities, shall be transferred to the Judicial Council.

(f) The task force recommendations concerning money collected for court facilities consist of the following:

(1) That money collected for trial court facilities operation and maintenance through the county facilities payment, as deposited in the Court Facilities Trust Fund, which represents ''funds historically spent by counties to maintain existing court facilities,'' should continue to be

used "to fund or offset the management, operations, and maintenance of all existing facilities."

(2) That the money collected for court facilities construction through filing fee surcharges and the State Court Construction Penalty Assessment, as deposited in the State Court Facilities Construction Fund, should be "dedicated to the capital facilities' needs of the judicial branch."

SEC. 2. Chapter 4.2 (commencing with Section 69202) is added to Title 8 of the Government Code, to read:

CHAPTER 4.2. APPELLATE COURT FACILITIES

69202. (a) The Judicial Council shall annually recommend to the Governor and the Legislature the amount proposed to be spent for the planning, renovation, and building of facilities for the appellate courts.

(b) Facilities shall be subject to the State Building Construction Act of 1955 (commencing with Section 15800) and the Property Acquisition Law (commencing with Section 15850), except, notwithstanding any other provision of law, the Administrative Office of the Courts shall serve as the implementing agency upon the approval of the Department of Finance.

69204. The Judicial Council, as the policymaking body for the judicial branch, shall have the following responsibilities and authorities with regard to appellate court facilities, in addition to any other authority or responsibilities established by law:

(a) Exercise full responsibility, jurisdiction, control, and authority as an owner would have over appellate court facilities, including, but not limited to, the acquisition and development of facilities.

(b) Exercise the full range of policymaking authority over appellate court facilities, including, but not limited to, planning, construction, acquisition, and operation, to the extent not otherwise limited by the law.

(c) Establish policies, procedures, and guidelines for ensuring that the appellate courts have adequate and sufficient facilities, including, but not limited to, facilities' planning, acquisition, construction, design, operation, and maintenance.

(d) Allocate appropriated funds for appellate court facilities maintenance and construction, subject to the other provisions of this chapter.

(e) Prepare funding requests for appellate court facility construction, repair, and maintenance.

(f) Implement the design, bid, award, and construction of all appellate court construction projects, except as delegated to others.

(g) Provide for capital outlay projects that may be built with funds appropriated or otherwise available for these purposes, as follows:

(1) Approve five year and master plans for each appellate court.

(2) Establish priorities for construction.

(3) Submit the cost of projects proposed to be funded to the Department of Finance for inclusion in the Governor's budget.

(h) Keep funding for appellate court facilities, whether for operation, planning, or construction, separate from funding for trial court facilities.

69206. The Administrative Office of the Courts shall have the following responsibilities and authority in addition to other responsibilities and authority granted by law or delegated by the Judicial Council:

(a) Carry out the policies of the Judicial Council in regard to appellate court facilities, except as otherwise limited by the law.

(b) Develop for Judicial Council approval the master plans for appellate court facilities in each court.

(c) Construct appellate court buildings, including, but not limited to, selection of architects and contractors, except as otherwise limited by the law.

SEC. 3. Section 68073 of the Government Code is amended and renumbered to read:

70311. (a) Commencing July 1, 1997, and each year thereafter, no county or city and county is responsible to provide funding for ''court operations,'' as defined in Section 77003 and Rule 810 of the California Rules of Court, as it read on July 1, 1996.

(b) Except as provided in Section 70312, commencing as of July 1, 1996, and each year thereafter, each county or city and county shall be responsible for providing necessary and suitable facilities for judicial and court support positions created prior to July 1, 1996. In determining whether facilities are necessary and suitable, the reasonable needs of the court and the fiscal condition of the county or city and county shall be taken into consideration.

(c) If a county or city and county fails to provide necessary and suitable facilities as described in subdivision (b), the court shall give notice of a specific deficiency. If the county or city and county then fails to provide necessary and suitable facilities pursuant to this section, the court may direct the appropriate officers of the county or city and county to provide the necessary and suitable facilities. The expenses incurred, certified by the judges to be correct, are a charge against the county or city and county treasury and shall be paid out of the general fund.

(d) Prior to the construction of new court facilities or the alteration, remodeling, or relocation of existing court facilities, a county or city and county shall solicit the review and comment of the judges of the court affected regarding the adequacy and standard of design, and that review and comment shall not be disregarded without reasonable grounds.

(e) Any reference in the statutes enacted prior to January 1, 2003, that refers to Section 68073 shall be deemed to refer to this section.

SEC. 4. Chapter 5.7 (commencing with Section 70301) is added to Title 8 of the Government Code, to read:

CHAPTER 5.7. SUPERIOR COURT FACILITIES

Article 1. General Provisions

70301. This chapter shall be known and may be cited as the ''Trial Court Facilities Act of 2002.''

As used in this chapter:

(a) ''Bonded indebtedness'' includes any financial encumbrance, including, but not limited to, bonds, lease revenue bonds, certificates of participation, mortgages, liens, or loans, on a building.

(b) ''Building'' means a single structure or connected structures. A building may include related structures.

(c) ''County facilities payment'' means the amount established by Article 5 of this chapter to be paid by a county in partial exchange for relief from the responsibility for providing court facilities.

(d) ''Court facilities'' consist of all of the following:

(1) Rooms for holding superior court.

(2) The chambers of the judges of the court.

(3) Rooms for the attendants of the court, including, but not limited to, rooms for accepting and processing documents filed with the court.

(4) Heat, ventilation, air-conditioning, light, and fixtures for those rooms and chambers.

(5) Common and connecting space to permit proper and convenient use of the rooms.

(6) Rooms for secure holding of a prisoner attending court sessions, together with secure means of transferring the prisoner to the courtroom.

(7) Any other area within a building required or used for court functions.

(8) Grounds appurtenant to the building containing the rooms.

(9) Parking spaces historically made available to one or more users of court facilities.

(e) ''Deferred maintenance'' means a backlog of projects that occurs when ongoing maintenance and repair of court facilities or a building is not sustained at an appropriate level in quality, quantity, or frequency to support the designed level of service of the building or special repair projects are not accomplished as needed.

(f) ''Historical building'' means a building that is identified as a historical building by the county board of supervisors and is either a ''qualified historical building or structure,'' as defined in Section 18955

of the Health and Safety Code, or is a building eligible for inclusion on the National Register of Historic Places under Section 470a of Title 16 of the United States Code.

(g) ''Maintenance'' means the ongoing upkeep of buildings, equipment, grounds, and utilities required to keep a building and its systems in a condition adequate to support its designed level of service.

(h) ''Responsibility for facilities'' means the obligation of providing, operating, maintaining, altering, and renovating a building that contains the facilities.

(i) ''Shared use'' refers to a building which is used for both court and noncourt purposes.

(j) ''Special improvement'' means any modification that increases the designed level of services of a building, or a one-time modification of a building that is not expected to be repeated during the lifetime of the building.

(k) ''Special repair'' means modifications that maintain the designed level of services of a building and does not include a special improvement.

(*l*) ''Unacceptable seismic safety rating'' means a rating of either ''substantial risk'' (level V), ''extensive but not imminent risk'' (level VI), or ''imminent risk'' (level VII) under the Risk Acceptability Table of the State Building Seismic Program as developed by the Division of the State Architect, April 1994, p. II-2.

(m) ''Usable space'' means space that an occupier of a facility can actually use and may allocate to house personnel and furniture.

(n) ''User rights'' means the right to exclusive use of the noncommon area within a building allocated to that use as well as shared use of the common areas of the building and the appurtenant grounds and parking.

70303. (a) The Court Facilities Dispute Resolution Committee is hereby created to hear and determine disputes between a county and the Judicial Council as specified by this chapter.

(b) The committee shall consist of the following members:

(1) One person selected by the California State Association of Counties.

(2) One person selected by the Judicial Council.

(3) One person selected by the Director of Finance.

(c) The committee shall hear and make recommendations to the Director of Finance for determinations in disputes involving the following matters:

(1) Buildings rejected for transfer of responsibility because of deficiencies as provided in Section 70328.

(2) Failure to reach agreement on transfer of responsibility for a building as provided in Section 70333.

(3) Disputes regarding the appropriateness of expenditures from a local courthouse construction fund as provided in Section 70403.

(4) County appeal of a county facilities payment amount as provided in subdivision (e) of Section 70366.

(5) Administrative Office of the Courts appeal of a county facilities payment amount as provided in subdivision (e) of Section 70367.

(d) Upon receipt of the recommendation from the committee, the Director of Finance shall make the final determination of the issue in dispute.

(e) The expenses of members of the committee shall be paid for by the agency or organization selecting the member.

(f) The Judicial Council, the California State Association of Counties, and the Department of Finance shall jointly provide for staff assistance to the committee.

(g) Regulations and rules adopted by the committee shall be exempt from review and approval or other processing by the Office of Administrative Law required by Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2.

Article 2. Responsibility for Court Facilities

70312. If responsibility for court facilities is transferred from the county to the Judicial Council pursuant to this chapter, the county is relieved of any responsibility under Section 70311 for providing those facilities. The county is also relieved of any responsibility for deferred or ongoing maintenance for the facility transferred, except for the county facilities payment required by Section 70353. Except as otherwise provided by this chapter, or by the agreement between the Judicial Council and the county under this chapter, the Judicial Council shall have ongoing responsibility for providing trial court facilities. If responsibility for all court facilities within a county has been transferred pursuant to this chapter, that county shall have no responsibility for providing court facilities. This section does not relieve a county of its obligation under Article 5 (commencing with Section 70341) or its obligations under any agreement entered into pursuant to this chapter.

70313. This chapter may not be construed as authorizing a county, a city and county, a court, the Judicial Council, or the state to supply to the official reporters of the courts stenography, stenotype, or other shorthand machines, or as authorizing the supply to the official reporters of the courts, for use in the preparation of transcripts, of typewriters, transcribing equipment, supplies, or other personal property. The enactment of this provision is a statement of existing law under former subdivision (f) of Section 68073 and is not a modification of the prior law.

Article 3. Agreements Transferring Responsibility for Court Facilities

70321. The Judicial Council, in consultation with the superior court of each county and the county shall enter into agreements concerning the transfer of responsibility for court facilities from that county to the Judicial Council. The agreements shall be negotiated between July 1, 2003, and June 30, 2007, inclusive. Transfer of responsibility may occur not earlier than July 1, 2004, and not later than June 30, 2007. On or before July 1, 2003, each county shall designate those persons who shall negotiate the agreements on behalf of the county and shall give the Judicial Council the names of those persons. The name of a person designated by a county to negotiate on its behalf may be changed by the county at any time by providing written notice to the Judicial Council.

70322. The transfer of responsibility for court facilities in each building shall be subject to a separate agreement.

70323. Subject to the provisions of Section 70325 concerning a building subject to a bonded indebtedness, and Section 70329 concerning historic buildings, transfer of responsibility for court facilities shall be evidenced by the following change in title to the building containing those facilities:

(a) If the building is currently owned by the county and used solely for court functions, the building shall be transferred to the state which shall hold title to and use of the entire building. This subdivision may not apply to buildings that are deficient as provided in subdivision (b) of Section 70326. Unless bonded indebtedness, including the legal obligation to pay the indebtedness, is transferred to the state, this subdivision does not apply so long as a court facility is subject to bonded indebtedness. Title shall transfer to the state when the bonded indebtedness is paid. For the purposes of this subdivision, bonded indebtedness includes only the bonded indebtedness existing at the time of transfer of responsibility, and any refunding of the existing bonded indebtedness issued to achieve monetary savings to the county. Any refunding under this subdivision does not extend the original maturity date of the bonded indebtedness and may not increase the original principal amount of the indebtedness, except to pay costs relating to the refunding of the bonded indebtedness.

(b) If the building is currently owned by the county and used for court and other county functions, title to the building may be held in one of three ways, each of which shall be considered a transfer of responsibility for the court facilities for purposes of Section 70312:

(1) The county may continue to hold title to the building.

(2) The county may transfer title to the building to the state.

(3) The county may transfer title to the building to joint ownership between the county and the state.

(c) If the building is currently owned by a third party and leased by the county, any of the following apply:

(1) If the lessor consents to transfer of the lease to the state either without modification of the lease or on modification terms acceptable to the county and the Judicial Council, the county shall transfer its rights and responsibilities under the lease to the state. The court shall then occupy the building under the terms of the lease.

(2) If the lessor does not consent to the transfer of the lease to the state or the lessor's new terms for transfer of the lease to the state are unacceptable to either the county or the Judicial Council, the county shall continue to provide facilities to the court under the terms of the lease and the amount of the lease payments shall be excluded from the county facilities payment provided by Section 70359. Upon expiration of the lease, the amount of the lease payments shall then be included in the county facilities payment in the same manner provided by Section 70359, as if the lease were transferred to the state.

(3) If the lessor does not consent to the transfer of the lease to the state or the lessor's new terms for transfer of the lease to the state are unacceptable to either the county or the Judicial Council, the county and the Judicial Council may agree that the provisions of paragraph (2) of subdivision (c) shall not apply, the court shall find alternative facilities, and the amount of the lease payments due under the lease shall be included in the county facilities payment as provided by Section 70359. The agreement under this subdivision may include an agreement for a different lease payment amount to be included in the county facilities payment.

70325. (a) (1) If title to a building proposed to be transferred pursuant to this chapter is subject to a bonded indebtedness, the county shall retain the revenue sources used to pay the bonded indebtedness in which case the county shall be required to continue to make the payments on the bonded indebtedness.

(2) As an alternative to paragraph (1), the county and the state may agree that the county shall transfer the revenue sources to the state, in which case, the state shall be required to make the payments on the bonded indebtedness in the amount of the revenue received. If the amount payable on the bonded indebtedness exceeds the amount of the revenue transferred to the state, the county shall be responsible for paying the remaining amount. If a revenue source is used to pay the bonded indebtedness on several buildings and not all of those buildings are being transferred to the state, the county shall transfer the proportion of the revenue used to pay the bonded indebtedness on the buildings transferred to the state. Except for revenue sources subject to Section

70375, any revenue source transferred by the county to the state under this paragraph shall be transferred back to the county by the state when the bonded indebtedness on the building is retired.

(b) Except in the case of a shared use building or historical facility whose title is not being transferred from the county, the agreement concerning transfer of responsibility for court facilities contained in a building subject to bonded indebtedness shall specify when title to the building will transfer, which shall not be later than the date of final payment of the bonded indebtedness on the building. A county shall not extend the term of the final maturity date of, or increase the amount of, any bonded indebtedness on a building containing court facilities whose responsibility has been transferred to the state without the consent of the Administrative Director of the Courts. For the purposes of this subdivision, the amount of the bonded indebtedness shall not be deemed to be increased if the amount is refunded for an amount not greater than the original principal amount of the indebtedness plus any costs relating to the refunding of the bonded indebtedness.

(c) Notwithstanding any provision to the contrary in this chapter, during the period and to the extent which bonded indebtedness is outstanding with respect to any court facility, the state shall not have any equity or other ownership rights in, to, or with respect to, the court facility. A county may not sell, assign, or transfer any rights or interests in that facility, or otherwise further encumber the facility, other than those rights, interests, or encumbrances required by legal documents establishing the bonded indebtedness. If, during the period of bonded indebtedness outstanding with respect to a court facility, the state is required to vacate the facility through the operation or enforcement of the legal documents establishing the bonded indebtedness, the county shall be responsible for providing the state with suitable and necessary court facilities at least equal to those occupied by the state immediately prior to the date on which the state was compelled to vacate the facility.

70326. (a) Except as provided in this section, the agreement may not require any payment from the county to the state for any deficiencies in the court facilities being transferred caused by deferred maintenance.

(b) A building and the court facilities in it shall be deemed deficient if any of the following exist:

(1) A deficiency or deficiencies that constitute a significant threat to life, safety, or health.

(2) A deficiency or deficiencies that include seismically hazardous conditions with an unacceptable seismic safety rating.

(3) Deficiencies that in their totality are significant to the functionality of the facility.

(c) Neither title to a deficient building nor responsibility for the court facilities in that building shall transfer to the state or the Judicial Council

under this chapter, and Section 70312 does not apply to the court facilities in a deficient building, unless provision is made in the agreement for correction of the deficient items.

(d) If one or more phases of a maintenance project are pending on the court facilities prior to the date of the agreement under this article, the agreement shall specify whether the county shall complete those phases of the project, to the extent approved, or shall transfer funds to the state to permit completion of those phases of the project. As used in this section, a phase of a project is to be deemed pending to the extent that the board of supervisors has either approved the phase in whole or in part at a board of supervisors meeting, and either allocated or appropriated money for the phase in whole or in part, or executed a contract for the phase in whole or in part.

70327. (a) Prior to the completion of the negotiations concerning the transfer of responsibility for court facilities in a building, the state shall provide for a licensed structural engineer to inspect and evaluate the building containing the court facilities for seismic safety if the building was built under a building code prior to the 1988 Uniform Building Code and the building has not been upgraded since 1988 for seismic safety. The inspection shall be made using the method and criteria for seismic safety developed by the Department of General Services' Real Estate Services Division. Any repair required to the damage caused by the exploratory inspection shall be paid for by the state.

(b) The county shall assist the state in the inspection by providing the following:

(1) Access to the facility for inspection purposes.

(2) Drawings and design documents for the building, if available.

(3) Any reports on structural or seismic evaluations of the building.

(c) If a building is given an unacceptable seismic safety rating and the county subsequently performs seismic upgrade work, the state may, upon the request of the county and at the county's expense, contract with a licensed structural engineer to reinspect and reevaluate the building.

(d) Neither title to a building with an unacceptable seismic safety rating nor responsibility for the court facilities in that building shall transfer to the state or the Judicial Council under this chapter, and Section 70312 does not apply to the court facilities in that building, unless provision is made in the agreement for correction of the unacceptable seismic safety items.

(e) The Administrative Director of the Courts, in his or her discretion, with the approval of the Director of Finance or his or her designee, may waive the inspection required by subdivision (a) upon his or her finding of either of the following:

(1) The ratio of court facilities to other facilities in the building is minimal and title to the building is not being transferred to the state.

(2) The amount of court space in the building does not exceed 10,000 square feet.

70328. If a building receives an unacceptable seismic safety rating under Section 70327, or is rejected as deficient under Section 70326, the county may appeal that action to the Court Facilities Dispute Resolution Committee. The state has the burden of proving by a preponderance of the evidence the unacceptable seismic safety rating or deficient rating.

70329. (a) Title to a historical building containing court facilities may not be transferred to the state without the express consent of the county's board of supervisors.

(b) If title to a historical building containing court facilities is not transferred to the state, the county may still be relieved of its responsibility to fund court facilities under Section 70312 if the county as part of its agreement under this article either:

(1) Makes the court facilities within the historical building available to the Judicial Council for court use.

(2) Provides, with the consent of the Judicial Council, alternative court facilities of at least comparable size, condition, and utility.

(c) Court facilities provided under this section shall meet all requirements for transfer of court facilities under this chapter, and the court and the Judicial Council shall have all the rights to that building that they have under this chapter to other court facilities whose responsibility is transferred to the Judicial Council.

(d) A county shall not prevent a court from using court facilities traditionally used by that court in a historical building, except with the consent of the Administrative Director of the Courts.

70330. The agreement shall provide for parking spaces for the court of comparable convenience, number, and type, as was made available for court use as of October 1, 2001. For purposes of this section, parking spaces for the court includes, but is not limited to, spaces for judges, court employees, other court staff, witnesses, and jurors.

70331. (a) If there are one or more pending phases of a project involving court facilities and the responsibility for the facility is to be transferred to the Judicial Council, the Judicial Council may, as part of the agreement under this article, require the completion of those phases of the project, to the extent that county funds or property have been allocated, approved, appropriated, or committed to those phases of the project by resolution or ordinance as a condition of transfer of responsibility to the Judicial Council.

(b) This section applies irrespective of whether title to the building containing the court facilities is to be transferred to the state.

(c) As used in this section, a phase of a project is to be deemed pending to the extent that the board of supervisors has either approved the phase in whole or in part at a board of supervisors meeting, and allocated or appropriated money for the phase in whole or in part, or executed a contract for the phase in whole or in part.

(d) The Judicial Council may request the county to implement design changes relating to the project if either the overall effect of the changes do not increase the costs of the project to the county, or the Judicial Council agrees to pay any extra costs caused by the changes.

70332. The Judicial Council, in consultation with the Department of Finance and the trial courts, and the California State Association of Counties, in consultation with the Department of Finance and the counties, shall develop the procedures for implementing the transfer of responsibility for court facilities from the counties to the state as set forth in this article.

70333. If the Judicial Council and the county fail to reach agreement on any facility, each shall present its position to the Court Facilities Dispute Resolution Committee which shall render its determination concerning that transfer of responsibility for that facility.

Article 4. Administration of Shared Use Buildings

70341. (a) The user rights of the court and the county are based on the proportional allocation of exclusive use facilities within the building for the court and for the county as specified in the agreement, regardless of the entity holding title to the building.

(b) The court and the county shall each have exclusive use of the facilities in the building currently used by it, together with the shared use of the common areas, indefinitely and at no cost, subject to the terms of any lease with a third-party lessor.

70342. (a) If the county holds title to a shared use building and the court wishes to have additional space in the building, if the county agrees to allocate additional space, the county may charge the state reasonable rent for any space as may be agreed between the county and the Judicial Council.

(b) If the state holds title to a shared use building and the county wishes to have additional space in the building, if the state agrees to allocate additional space, the state may charge the county reasonable rent for any space as may be agreed to between the county and the Judicial Council.

(c) If the state and the county jointly hold title to a shared use building and either the court or the county wishes to have additional space in the building, the Judicial Council and the county may agree to modify the amount of space and the charges made for that space.

(d) If the state or the county is a lessee in a shared use building owned by a third party and the court or the county wishes to have additional space in the building, the Judicial Council or the county may negotiate with the lessor concerning the amount of space and the charges made for that space. This subdivision does not permit either the state or the county to occupy space in the building leased by the other party without the consent of that party.

(e) Unless the Judicial Council and the county agree otherwise, if either the Judicial Council or the county desires to decrease the amount of space it occupies in a shared use building, it may do so only after offering the other party the space on the same terms and conditions as to which it has proposed to transfer the space to a third party. Notwithstanding the transfer of space pursuant to this subdivision or the failure to use the space, the Judicial Council and the county are not relieved of their rights and responsibilities under the agreement entered into pursuant to Section 70343, unless that agreement is superseded by a subsequent agreement. As used in this subdivision, a ''third party'' means an entity other than the court or the county.

70343. (a) Notwithstanding the manner of holding title to a shared use building:

(1) The rights and responsibilities of the Judicial Council, the court, and the county in a shared use building shall be established by an agreement between the Judicial Council and the county which may be modified by the consent of both the Judicial Council and the county. The agreement shall include, but not be limited to:

(A) The liability and responsibility for ongoing maintenance and administration of the building.

(B) Any agreed-upon conditions involving the ongoing administration of the building.

(C) Any agreements concerning general liability for the building, building planning, engineering, design, maintenance, repair, construction, failure to maintain common use areas, and dispute resolution.

(D) A provision involving resolution of disputes that may arise under the agreement between the county and the Judicial Council.

(2) Unless otherwise specifically provided by agreement between the Judicial Council and the county, the Judicial Council and the county shall share operation and maintenance costs in a shared use building as follows:

(A) Each entity is responsible for the operation and normal day-to-day maintenance costs of that space in the building exclusively used by the entity.

(B) Each entity shall share the operating and normal day-to-day maintenance costs for the common space in the building based on the proportionate amount of space exclusively used by each entity.

(C) Each entity shall share the major building repairs and maintenance affecting the entire building, including, but not limited to, common areas, based on the proportionate amount of space exclusively used by each entity.

(b) The use of space in a joint-use building by both the court and the county shall be compatible with the building and shall not deteriorate or diminish the ability of either the county or the court to use the remaining space effectively.

70344. (a) The entity holding title to a shared use building, except a third-party lessor, shall not transfer any right to a third party of the part of the building used by the other entity or place further bonded indebtedness on it, except as already required by operation of the legal documentation related to bonded indebtedness or as agreed to by the Judicial Council and the county, if the result of the action would be a further delay in transfer of title to the building to the other party pursuant to subdivision (b) of Section 70325.

(b) If either the court or the county occupies 80 percent or more of a shared use building, the Judicial Council, on behalf of the court, or the county may require the other entity to vacate the building. The entity vacating the building shall be given reasonable notice and shall be compensated by the other entity for its equity in the facility and for relocation costs at the fair market rate.

(c) Except as provided in subdivision (b), if the court or the Judicial Council is required to vacate a shared use building owned by the county, in whole or in part, the county shall provide the court or the Judicial Council with suitable and necessary facilities at least equal to those previously occupied by the court. The failure of the county to provide those facilities shall make the county responsible to the court under Section 70311 for the facilities not provided.

Article 5. County Facilities Payment

70351. It is the intent of the Legislature in enacting this section to provide a source of funding for the ongoing operations and maintenance of court facilities by requiring each county to pay to the state the amount that county historically expended for operation and maintenance of court facilities. It is further the intent of the Legislature that funding for the ongoing operations and maintenance of court facilities that are in excess of the county facilities payments be provided by the state.

70352. (a) There is hereby established the Court Facilities Trust Fund.

(b) Money deposited in this fund and appropriated by the Legislature shall be administered by the Judicial Council for the operation, repair, and maintenance of court facilities and other purposes provided by statute. The Judicial Council may delegate the administration of the fund to the Administrative Director of the Courts.

(c) The Judicial Council shall recommend to the Governor and the Legislature each fiscal year on the proposed expenditures from the fund and submit a report on actual expenditures after the end of each fiscal year.

70353. (a) Each county shall remit the county facilities payment determined by this article to the Controller, for deposit into the Court Facilities Trust Fund. One-quarter of each county's facilities payment shall be remitted to the Controller quarterly on October 1, January 1, April 1, and July 1. Any payment that is not made when required by this subdivision shall be considered delinquent, and subject to the penalties specified in subdivision (b).

(b) 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. Penalty amounts calculated pursuant to this subdivision shall be paid by the county to the Court Facilities Trust Fund no later than 45 days after the end of the month in which the penalty was calculated.

(c) The Judicial Council shall provide the Controller with a schedule of the county facility payments at the beginning of each fiscal year. If the amount of the county facility payment changes pursuant to this article, the Judicial Council shall provide the Controller with a new schedule of payments within 30 days of the change.

70354. The components of the county facilities payment are based on the actual annual direct and indirect county expenditures on court facilities. In the case of a shared use building, the amounts are prorated for the court's usable space in the building as a percentage of total usable space in the building. The determination of the court's usable space and the total usable space shall be made by the standard methodology used for determining usable space by the Department of General Services.

70355. Except for the value computed under Section 70359, all values listed in this article shall be adjusted from the fiscal year of the expenditure to the effective date of transfer for inflation using, as the inflation index, the average of the following three indices from the Bureau of Labor Statistics Producer Price Index:

(a) Building cleaning and maintenance services (Series Id PCU 7349).

(b) Operators and lessors of nonresidential buildings (Series Id PCU 6512).

(c) Maintenance and repair constructions (Series Id PCU BMRP).

70356. The following items shall be included in the county facilities payment based on a five-year average of expenditures made by the county for facility operation and maintenance. This amount shall be computed by multiplying the value for each of the five fiscal years from 1995–96 to 1999–2000, inclusive, by the increase in the inflation index from January 1 of that fiscal year to the date of transfer of responsibility for the court facilities from the county to the state, and then averaging the five inflated yearly values:

(a) Maintenance and repair, including, but not limited to, maintenance and repair of the building and its components, utility systems, security equipment, and interior and exterior lighting.

(b) Purchase, installation, modernization, and maintenance of major building systems not of an ongoing nature, including, but not limited to, plumbing, HVAC (heating, ventilation, and air-conditioning), electrical, and vertical transportation.

(c) A special repair.

(d) Landscaping and grounds maintenance services for court facilities.

(e) Maintenance of parking spaces or garages dedicated to the court or for jurors.

(f) County facility management and administrative costs directly or indirectly associated with trial court facilities, including, but not limited to, management, supervision, planning, design, department administration, payroll, finance, procurement, and program management.

70357. The cost of utilities shall be included in the county facilities payment by calculating the average consumption of utilities for the fiscal years 1995–96 to 1999–2000, inclusive, and multiply the consumption averages by the 1999–2000 rates, and multiplying the value by the increase in the inflation index from January 1, 2000, to the date of transfer of responsibility for the court facilities from the county. As used in this section, utility costs include, but are not limited to, natural gas, heating oil, electricity, water, sewage, and garbage. The consumption rates for 1999–2000 shall be the average of the rates for each month of that fiscal year. Utility costs shall be included without regard to whether payment of the costs was made by the county, the court, or another entity, except that the amount of specific utility costs may not be included in the county facilities payment if all of the following conditions are satisfied:

(a) A lease expressly provides that the utilities are to be paid by the lessor.

(b) There is no payment by the lessee for the utilities, except as part of the lease payment.

(c) The lease payment is included in the county facilities payment.

70358. Insurance costs shall be included in the county facilities payment. If the actual expenditures made by the county are used to determine the amount, the expenditures shall be based on the 1999–2000 fiscal year multiplied by the increase in the inflation index from January 1, 2000, to the date of the transfer of responsibility for the court facilities from the county to the state.

The amount of insurance may not include the cost of any insurance required by any agreement involving bonded indebtedness on the facility to the extent that the cost of insurance is greater than the cost of commercial insurance coverage on the building.

The determination of the insurance costs may consider the costs of commercial insurance coverage for a fair and reasonable level of insurance and the costs of self-insurance. The amount of the insurance costs shall be subject to negotiation between the Judicial Council and the county.

To the extent the responsibility for grounds is transferred, the insurance costs for court facilities shall include, but not be limited to, the cost of liability insurance relating to the grounds.

70359. (a) Court facilities rental or leasing, except to the extent included as a court operation in Rule 810 of the California Rules of Court, shall be included in the county facilities payment using as the initial amount the annual amount for the lease for the fiscal year of the date of transfer of those court facilities to the state.

(b) The amount computed under subdivision (a) shall be adjusted annually for each remaining year in the lease to reflect the changed annualized amount for the lease for each year remaining on the lease. A lease amount in the final year of any lease entered into or renewed on or after October 2, 2001, shall represent a good faith relationship to the fair market value of the facilities either at the time of the making of the lease or the time of determination of the final year lease amount.

(c) The adjustment of the amount pursuant to subdivision (b) shall not permit either the county or the Judicial Council to appeal the county facilities payment amount under Section 70366 or 70367, except as to any issues directly related to the adjustment made by subdivision (b).

(d) The amount of any lease included in the county facilities payment amount shall, unless otherwise agreed to by the Administrative Director of the Courts and the county, be paid by the county from the county's courthouse construction fund, if the lease was originally entered into prior to July 1, 2002, and to the extent the lease was funded in whole or in part by the courthouse construction fund prior to July 1, 2002. The length of time payment that may be made from the courthouse

construction fund is to be calculated by the length of the lease entered into before July 1, 2002, plus any one renewal or extension of not more than five years entered into on or after July 2, 2002. The Administrative Director of the Courts may agree to a longer time for payment from the courthouse construction fund.

70360. Calculation of the county facilities payment may not include any of the following:

(a) Purchase of land and buildings.

(b) Construction and construction services.

(c) Maintenance of parking for the general public whose responsibility is not transferred and that may also be used by the courts or jurors.

(d) Depreciation of court facilities.

(e) Costs associated with court facilities or a portion of the facilities that is not transferred to the state or that remains a county responsibility.

(f) A capital project that alters the facilities' function or capacity.

(g) Any county payments resulting from bonded indebtedness and not normally a cost of building operation.

(h) A special improvement.

70361. The Administrative Office of the Courts, in consultation with the courts, and the California State Association of Counties, in consultation with the counties, shall jointly prepare forms and instructions for calculating the county facilities payment in compliance with this section and submit those forms and instructions to the Director of Finance for approval. In the event that the Administrative Office of the Courts and the California State Association of Counties are unable to agree on forms and instructions, they shall present their positions of agreement and disagreement to the Director of Finance who shall make the final determination on the forms and instructions. The proposed forms and instructions or positions of each party shall be provided to the Director of Finance no later than June 30, 2003. Upon approval by the Director of Finance, the Administrative Office of the Courts shall provide the counties and the courts with the approved forms and instructions.

70362. The Department of Finance shall provide the Administrative Office of the Courts with the base inflation index figures for January 1, 1996, January 1, 1997, January 1, 1998, January 1, 1999, and January 1, 2000, to be included in the approved instructions. When the proposed date of transfer of responsibility is determined for a facility, the department shall provide the Administrative Office of the Courts with the inflation index figures for that county for the proposed dates of transfer. If the actual date of transfer is different than the proposed date of transfer, the department shall provide the Administrative Office of the

Courts with the inflation index figures for that county for the actual date of transfer.

70363. Each county shall calculate the county facilities payment for each facility using the forms and instructions as approved and distributed pursuant to Section 70361. The county shall mail the Judicial Council and local court the actual expenditure figures and adjustments at least 90 days prior to the proposed date of transfer of responsibility for that facility. The county auditor shall certify the reported expenditures and indexed calculations.

(a) Prior to the transfer of responsibility of each court facility from the county to the state, the Administrative Office of the Courts shall review the accuracy of the calculations.

(b) The Administrative Office of the Courts and the county shall meet and discuss any differences they have concerning the calculations in an effort to reduce or eliminate any areas of disagreement. Following the discussions, the Administrative Office of the Courts shall mail the Department of Finance the proposed county facility payment and any necessary background information, including the calculations and the reported county expenditures and a summary of any disagreements between the Administrative Office of the Courts and the county regarding the payment.

(c) The Department of Finance shall within 30 days of the receipt of the proposed county facilities payment from the Administrative Office of the Courts do any of the following:

(1) Approve the proposed payment.

(2) Approve a modified payment.

(3) Request additional information from either the county or the Administrative Office of the Courts.

(d) When the department has approved a county facilities payment for that facility, it shall mail the Administrative Director of the Courts the approved county facilities payment. The Administrative Office of the Courts shall mail a copy of the Department of Finance notification to the county administrative officer and the court executive officer.

70365. The parties to any appeal of the determination of the county facilities payment, for purposes of the mailing of documents, are the county administrative officer, on behalf of the county, and the Administrative Director of the Courts, on behalf of both the state and the court.

70366. (a) Within 30 days after the Administrative Office of the Courts has mailed the county the approved county facilities payment, pursuant to Section 70364, the county may submit a declaration to the Court Facilities Dispute Resolution Committee, with the mailing of copies to the other parties, that the amount is incorrect for one or more of the following reasons:

(1) Expenditure data is reported incorrectly or calculated incorrectly and causes an approved county facilities payment amount that is higher than the payment should be.

(2) The approved county facilities payment includes amounts that were specifically appropriated, funded, and expended by the county to fund extraordinary one-time expenditures. Extraordinary one-time expenditures do not include periodic major facility repair or maintenance including, but not limited to, reroofing or replacement of a major system component. Extraordinary one-time expenditures do include, but are not limited to, abatement of asbestos and seismic structural upgrades.

(3) The approved county facilities payment includes expenses funded from grants or subventions that would not have been funded without these grants or subventions.

(b) The Administrative Director of the Courts shall mail comments to the Court Facilities Dispute Resolution Committee on the county's declaration within 30 days of the mailing of the county's declaration, with the mailing to the other parties.

(c) Within 90 days of receipt of comments pursuant to subdivision (b), the Court Facilities Dispute Resolution Committee shall review the declarations and comments received, and make its recommendation to the Director of Finance concerning correction of any errors and, if necessary, adjustment of the amount of the county facilities payment. The Court Facilities Dispute Resolution Committee shall mail a copy of its recommendation to all the parties.

(d) The Director of Finance or his or her designee shall review the recommendations of the Court Facilities Dispute Resolution Committee and make his or her determination concerning any correction of errors and, if necessary, adjustment of the amount of the county facilities payment. The director shall mail a copy of his or her determination on all the parties.

70367. (a) Within 30 days after the Administrative Director of the Courts has mailed to the county, under Section 70364, the approved county facilities payment, the Administrative Director of the Courts may submit a declaration to the Court Facilities Dispute Resolution Committee, mailing of copies to the other parties, that the amount is incorrect because the county failed to report court facilities expenses paid by the county which reduced the amount of the approved county facilities payment.

(b) The county shall mail its comments to the Court Facilities Dispute Resolution Committee on the administrative director's declaration within 30 days of the mailing of the administrative director's declaration, with mailing to the other parties.

(c) Within 90 days of receipt of comments pursuant to subdivision (b), the Court Facilities Dispute Resolution Committee shall review the declarations and comments received, and makes its recommendation to the Director of Finance concerning correction of any errors and, if necessary, adjustment of the amount of the county facilities payment. The Court Facilities Dispute Resolution Committee shall mail a copy of its recommendation to all the parties.

(d) The Director of Finance or his or her designee shall review the recommendations of the Court Facilities Dispute Resolution Committee and make his or her determination concerning any correction of errors and, if necessary, adjustment of the amount of the county facilities payment. The director shall serve a copy of his or her determination on all the parties.

70368. The county shall initially compute a separate county facilities payment for each building containing court facilities whose responsibility is transferred to the Judicial Council using the proposed date of transfer of responsibility for those court facilities as the date for computing inflation under Sections 70356, 70357, and 70358. The county's responsibility for the county facilities payment for those facilities commences upon the actual date of transfer of responsibility for those facilities. If the actual date of transfer of responsibility for a facility is different than the proposed date of transfer, upon which the county facilities payment is calculated, the Administrative Office of the Courts shall adjust the amount of the county facilities payment by applying the inflation index figures for that county for the actual date of transfer, as provided in Section 70362, to the approved county facilities payment. The amount of any county facilities payment that takes effect after the beginning of a fiscal year shall be prorated for the amount remaining in that fiscal year. In no event shall a county have any responsibility for a court facility payment prior to the effective date of the transfer of responsibility for a facility.

70369. Where mail of notice or any other document is required by this article, any method of mailing equivalent to first-class mail may be used. The computation of time based on mailing under this article is based on the date the item was deposited in the mail.

70370. If the amount computed by the county under Section 70368 is increased pursuant to this article, the county shall pay the state the difference relating back to the initial date payment was due under Section 70368. If the amount computed by the county under Section 70368 is reduced pursuant to this article, the state shall pay the county the difference relating back to the initial date payment was due under Section 70368. Upon agreement between the county and state, any amount due under this section may be made by an addition or reduction in the next scheduled county facilities payment.

Article 6. State Court Facilities Construction Fund

70371. There is hereby established the State Court Facilities Construction Fund, the proceeds of which shall be subject to the provisions of this article. Improvement of the court facilities and the construction funds generated by this article are intended to further reasonable access to the courts and judicial process throughout the state for all parties.

70372. (a) Except as otherwise provided in this article, there shall be levied a state court construction penalty, in addition to any other state or local penalty including, but not limited to, the penalty provided by Section 1464 of the Penal Code and Section 76000 of the Government Code, in an amount equal to five dollars ($5) for every ten dollars ($10) or fraction thereof, upon every fine, penalty, or forfeiture imposed and collected by the courts for criminal offenses, including, but not limited to, all offenses, except parking offenses, as defined in subdivision (i) of Section 1463 of the Penal Code, involving a violation of a section of the Fish and Game Code, the Health and Safety Code, or the Vehicle Code or any local ordinance adopted pursuant to the Vehicle Code. Any bail schedule adopted pursuant to Section 1269b of the Penal Code may include the necessary amount to pay the state penalties established by this section, by Section 1464 of the Penal Code, and Chapter 12 (commencing with Section 76000) of Title 8 of the Government Code for all matters where a personal appearance is not mandatory and the bail is posted primarily to guarantee payment of the fine. After a determination by the court of the amount due, the clerk of the court shall collect the penalty and transmit it immediately to the county treasury and the county treasurer shall transmit these sums as provided in subdivision (f).

(b) In addition to the penalty provided by subdivision (a), for every parking offense where a parking penalty, fine, or forfeiture is imposed, an added state court construction penalty of one dollar and fifty cents ($1.50) shall be included in the total penalty, fine, or forfeiture. These moneys shall be taken from fines and forfeitures deposited with the county treasurer prior to any division pursuant to Section 1462.3 or 1463.009 of the Penal Code. In those cities, districts, or other issuing agencies which elect to accept parking penalties, and otherwise process parking violations pursuant to Article 3 (commencing with Section 40200) of Chapter 1 of Division 17 of the Vehicle Code, that city, district, or issuing agency shall observe the increased bail amounts as established by the court reflecting the added penalty provided for by this section. Each agency which elects to process parking violations shall pay to the county treasurer one dollar and fifty cents ($1.50) for the parking penalty imposed by this section for each violation which is not filed in court.

Those payments to the county treasurer shall be made monthly, and the county treasurer shall transmit these sums as provided in subdivision (f).

(c) Where multiple offenses are involved, the state court construction penalty shall be based upon the total fine or bail for each case. When a fine is suspended, in whole or in part, the state court construction penalty shall be reduced in proportion to the suspension.

(d) When any deposited bail is made for an offense to which this section applies, and for which a court appearance is not mandatory, the person making the deposit shall also deposit a sufficient amount to include the state court construction penalty prescribed by this section for forfeited bail. If bail is returned, the state court construction penalty paid thereon pursuant to this section shall also be returned.

(e) In any case where a person convicted of any offense, to which this section applies, is in prison until the fine is satisfied, the judge may waive all or any part of the state court construction penalty, the payment of which would work a hardship on the person convicted or his or her immediate family.

(f) Within 45 days after the end of the month that moneys are deposited in the county treasury pursuant to subdivision (a) or (b), the county treasurer shall transmit the moneys to the State Controller, to be deposited in the State Court Facilities Construction Fund.

70373. (a) To provide additional funds for maintaining and expanding the uniform accessibility of the courts and judicial process throughout the state, the following surcharges are added to the first appearance fee in the following actions:

(1) A surcharge in all general unlimited civil, family law, and probate actions, as follows:

(A) Ten dollars ($10) from January 1, 2003, through December 31, 2003.

(B) Fifteen dollars ($15) from January 1, 2004, through December 31, 2007.

(2) A surcharge of twenty-five dollars ($25) in all limited civil actions.

(b) The clerk of the court shall collect the surcharge and transmit it to the State Controller, to be deposited in the State Court Facilities Construction Fund. Notwithstanding any other provision of law, the full amount of the surcharge collected shall be deposited as provided in this section.

70373.5. (a) Notwithstanding paragraph (2) of subdivision (a) of Section 70373, a surcharge of eighteen dollars ($18) shall be added to the first appearance fee in all limited civil actions.

(b) The surcharge provided for in this section and Section 70373 are not subject to the percentage surcharge authorized by Section 68087.

(c) This section shall become inoperative on July 1, 2007, and as of January 1, 2008, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2008, deletes or extends that date.

70374. (a) The Judicial Council shall annually recommend to the Governor and the Legislature the amount proposed to be spent for projects paid for with money in the State Court Facilities Construction Fund. The use of the appropriated money is subject to subdivision (*l*) of Section 70391.

(b) Facilities shall be subject to the State Building Construction Act of 1955 (commencing with Section 15800) and the Property Acquisition Law (commencing with Section 15850), except that notwithstanding any other provision of law, the Administrative Office of the Courts shall serve as an implementing agency upon approval of the Department of Finance.

(c) Money in the State Court Facilities Construction Fund shall only be used for either of the following:

(1) To acquire, rehabilitate, construct, or finance court facilities, as defined by subdivision (e) of Section 70302.

(2) To rehabilitate one or more existing court facilities in conjunction with the construction, acquisition, or financing of one or more new court facilities.

(d) Twenty-five percent of all money collected for the State Court Facilities Construction Fund from any county shall be designated for implementation of trial court projects in that county. The Judicial Council shall determine the local projects after consulting with the trial court in that county and based on the locally approved trial court facilities master plan for that county.

(e) Any money in the fund that is appropriated for use on a project that is not needed for completion of that project shall be returned to the fund. The amount shall then be divided between the fund and other state funds in the same proportion that the original sources of money for the project came from the fund and other state funds.

70375. (a) This article shall take effect on January 1, 2003, and the fund, penalty, and fee assessment established by this article shall become operative on January 1, 2003, except as otherwise provided in this article.

(b) In each county, the amount authorized by Section 70372 shall be reduced by the following:

(1) The amount collected for deposit into the local Courthouse Construction Fund established pursuant to Section 76100.

(2) The amount collected for transmission to the state for inclusion in the Transitional State Court Facilities Construction Fund established pursuant to Section 70401 to the extent it is funded by money from the local Courthouse Construction Fund.

(c) The amount authorized by Section 70373 shall be reduced by the following in the following counties:

(1) In the County of Riverside, the amount collected pursuant to Section 26826.1 of the Government Code for transmission to the state for inclusion in the Transitional State Court Facilities Construction Fund established pursuant to Section 70401.

(2) In the County of San Bernardino, the amount collected pursuant to Section 26826.4 of the Government Code for transmission to the state for inclusion in the Transitional State Court Facilities Construction Fund established pursuant to Section 70401.

(3) In the City and County of San Francisco, the amount collected pursuant to Section 76238 of the Government Code for transmission to the state for inclusion in the Transitional State Court Facilities Construction Fund established pursuant to Section 70401.

(d) The authority for all of the following shall expire proportionally as of the date of transfer of responsibility for facilities from the county to the Judicial Council, except so long as money is needed to pay for construction provided for in those sections and undertaken prior to the transfer of responsibility for facilities from the county to the Judicial Council:

(1) An additional penalty for a local Courthouse Construction Fund established pursuant to Section 76100.

(2) A filing fee surcharge in the County of Riverside established pursuant to Section 26826.1.

(3) A filing fee surcharge in the County of San Bernardino established pursuant to Section 26826.4.

(4) A filing fee surcharge in the City and County of San Francisco established pursuant to Section 76238.

(e) For purposes of subdivision (d), the term ''proportionally'' means that proportion of the fee or surcharge that shall expire upon the transfer of responsibility for a facility that is the same proportion as the square footage that facility bears to the total square footage of court facilities in that county.

70376. It is the intent of the Legislature that funding for courthouse alteration, renovation, and construction be funded by money in the State Court Facilities Construction Fund and additional money as necessary from the state.

70377. (a) Any amounts required to be transmitted by a county to the Controller pursuant to this article shall be remitted no later than 45 days after the end of the month in which the penalties were collected. Any remittance made later than this time shall be considered delinquent and subject to the penalties specified in this section.

(b) 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.

(c) Penalty amounts calculated pursuant to subdivision (b) shall be paid by the county to the Controller no later than 45 days after the end of the month in which the penalty was calculated. All money received by the Controller under this section shall be deposited in the State Court Facilities Construction Fund.

(d) If the penalty imposed by this section results from a court's failure to comply with the requirements for timely deposit of money with the county treasury, the court shall reimburse the county general fund in an amount equal to the actual penalty. Notwithstanding Section 77009, the court may pay this penalty from money received from the Trial Court Trust Fund. This section does not require an increase in a court's allocation from the Trial Court Trust Fund.

70378. The State Court Facilities Construction Fund shall be invested in the Surplus Money Investment Fund and all interest earned shall be allocated to the State Court Facilities Construction Fund semiannually and shall be allocated as otherwise provided in this article.

Article 7. Authority and Responsibility

70391. The Judicial Council, as the policymaking body for the judicial branch, shall have the following responsibilities and authorities with regard to court facilities, in addition to any other responsibilities or authorities established by law:

(a) Exercise full responsibility, jurisdiction, control, and authority as an owner would have over trial court facilities whose title is held by the state, including, but not limited to, the acquisition and development of facilities.

(b) Exercise the full range of policymaking authority over trial court facilities, including, but not limited to, planning, construction, acquisition, and operation, to the extent not expressly otherwise limited by law.

(c) Dispose of surplus court facilities following the transfer of responsibility under Article 3 (commencing with Section 70321), subject to all of the following:

(1) If the property was a court facility previously the responsibility of the county, the Judicial Council shall comply with the requirements of Section 11011, and as follows, except that, notwithstanding any other provision of law, the proportion of the net proceeds that represents the proportion of other state funds used on the property other than for operation and maintenance, shall be returned to the fund from which it

came and the remainder of the proceeds shall be deposited in the State Court Facilities Construction Fund..

(2) The Judicial Council shall consult with the county concerning the disposition of the facility.

(3) The Judicial Council shall consider whether the potential new or planned use of the facility:

(A) Is compatible with the use of other adjacent public buildings.

(B) Unreasonably departs from the historic or local character of the surrounding property or local community.

(C) Has a negative impact on the local community.

(D) Unreasonably interferes with other governmental agencies that use or are located in or adjacent to the building containing the court facility.

(E) Is of sufficient benefit to outweigh the public good in maintaining it as a court facility or building.

(4) All funds received for disposal of surplus court facilities shall be deposited by the Judicial Council in the State Court Facilities Construction Fund.

(5) If the facility was acquired, rehabilitated, or constructed, in whole or in part, with money in the State Court Facilities Construction Fund that was deposited in that fund from the state fund, any funds received for disposal of that facility shall be apportioned to the state fund and the State Court Facilities Construction Fund in the same proportion that the original cost of the building was paid from the state fund and other sources of the State Court Facilities Construction Fund.

(d) Conduct audits of all of the following:

(1) The collection of fees by the local courts.

(2) The money in local courthouse construction funds established pursuant to Section 76100.

(e) Establish policies, procedures, and guidelines for ensuring that the courts have adequate and sufficient facilities, including, but not limited to, facilities planning, acquisition, construction, design, operation, and maintenance.

(f) Establish and consult with local project advisory groups on the construction of new trial court facilities, including the trial court, the county, state agencies, bar groups, and members of the community.

(g) Manage court facilities in consultation with the trial courts.

(h) Allocate appropriated funds for court facilities maintenance and construction, subject to the other provisions of this chapter.

(i) Manage shared-use facilities to the extent required by the agreement under Section 70343.

(j) Prepare funding requests for court facility construction, repair, and maintenance.

(k) Implement the design, bid, award, and construction of all court construction projects, except as delegated to others.

(*l*) Provide for capital outlay projects that may be built with funds appropriated or otherwise available for these purposes as follows:

(1) Approve five-year and master plans for each district.

(2) Establish priorities for construction.

(3) Recommend to the Governor and the Legislature the projects shall be funded from the State Court Facilities Construction Fund.

(4) Submit the cost of projects proposed to be funded to the Department of Finance for inclusion in the Governor's budget.

(m) In carrying out its responsibilities and authority under this section, the Judicial Council shall consult with the local court for:

(1) Selecting and contracting with facility consultants.

(2) Preparing and reviewing architectural programs and designs for court facilities.

(3) Preparing strategic master and five-year capital facilities plans.

(4) Major maintenance of any facility.

70392. Pursuant to paragraph (2) of subdivision (b) of Section 70374, the Administrative Office of the Courts shall have the following responsibilities and authority in addition to other responsibilities and authority granted by law or delegated by the Judicial Council:

(a) Notwithstanding any other provision of law and subject to the appropriation of funds, provide the ongoing oversight, management, operation, and maintenance of facilities used by the trial courts, if the responsibility for the facility has been transferred to the Judicial Council pursuant to this chapter.

(b) Carry out the Judicial Council's policies with regard to trial court facilities, except as otherwise expressly limited by law.

(c) Develop for Judicial Council approval the master plans for trial court facilities in each district.

(d) Construction of court buildings, including, but not limited to, selection of architects and contractors, except as otherwise expressly limited by law.

(e) Delegate its responsibilities and authority to the local trial court for court facilities used by that court.

70393. The county shall have the following authority and responsibilities with regard to court facilities in addition to any other authority or responsibilities established by law:

(a) Manage the shared-use buildings whose title the county retains under subdivision (b) of Section 70323.

(b) Make recommendations to the court and the Judicial Council for the location of new court facilities.

(c) Provide services to local court facilities as provided in the agreement entered into under Section 70322.

(d) Indemnify the state for any liability imposed on the state pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. Sec. 9601 et seq.), or related provisions for conditions that existed on the property at the time of transfer whether or not known to the county.

Article 8. Transitional Funding

70401. There is hereby established in the State Treasury the Transitional State Court Facilities Construction Fund. For each facility transferred to the state that is subject to bonded indebtedness and for which a revenue source is also transferred to the state, pursuant to subdivision (b) of Section 70325, a separate account shall be established in the fund to receive and disburse moneys for that facility. The county shall continue to collect and transmit to the Controller for deposit in the fund the moneys transferred to service the debt on the facility. The fund shall cease to exist when all debt transferred to the state pursuant to Section 70325 has been paid.

70402. (a) Any amount in either a county's courthouse construction fund established by Section 76100, a fund established by Section 26826.1 in the County of Riverside, a fund established by Section 26826.4 in the County of San Bernardino, and a fund established by Section 76238 in the City and County of San Francisco, shall be transferred to the State Court Facilities Construction Fund at the later of the following:

(1) The date of the last transfer of responsibility for court facilities from the county to the Judicial Council or June 30, 2007, whichever is earlier.

(2) The date of the final payment of the bonded indebtedness for any court facility that is paid from that fund is retired.

(b) If the responsibility for one or more facilities does not transfer, the county's courthouse construction fund shall retain that portion of the total money in the fund as the square footage of the facilities that do not transfer bears to the total square footage of court facilities in that county.

70403. (a) Each county shall submit a report to the Administrative Director of the Courts and the Director of Finance accounting for all receipts and expenditures from the local courthouse construction fund established pursuant to Section 76100 for the period from January 1, 1998, to the date of transfer of the fund pursuant to subdivision (a) of Section 70402 or December 31, 2005, whichever is earlier.

(b) If the county retains the fund under subdivision (a) of Section 70325 for payment on existing bonded indebtedness of a courthouse facility, the county shall submit annual updates on all receipts and expenditures from the local courthouse construction fund, within 90

days of the end of each fiscal year, to the Administrative Director of the Courts and the Director of Finance.

(c) Any expenditures made from the fund for a purpose other than those specified in Section 76100 must be repaid to the state for deposit in the State Court Facilities Construction Fund pursuant to Section 70402. Either the Administrative Director of the Courts or the Director of the Department of Finance may provide the county with notice that an expenditure made from the fund was for a purpose other than as specified in Section 76100. If the county disagrees with the determination, it may appeal the determination to the Court Facilities Dispute Resolution Committee pursuant to Section 70303.

SEC. 5. Section 76000 of the Government Code is amended to read:

76000. (a) In each county there shall be levied an additional penalty of seven dollars ($7) for every ten dollars ($10) or fraction thereof which shall be collected together with and in the same manner as the amounts established by Section 1464 of the Penal Code, upon every fine, penalty, or forfeiture imposed and collected by the courts for criminal offenses, including all offenses involving a violation of the Vehicle Code or any local ordinance adopted pursuant to the Vehicle Code, except parking offenses subject to Article 3 (commencing with Section 40200) of Chapter 1 of Division 17 of the Vehicle Code. These moneys shall be taken from fines and forfeitures deposited with the county treasurer prior to any division pursuant to Section 1463 of the Penal Code.

The county treasurer shall deposit those amounts specified by the board of supervisors by resolution in one or more of the funds established pursuant to this chapter. However, deposits to these funds shall continue through whatever period of time is necessary to repay any borrowings made by the county on or before January 1, 1991, to pay for construction provided for in this chapter.

(b) In each authorized county, provided that the board of supervisors has adopted a resolution stating that the implementation of this subdivision is necessary to the county for the purposes authorized, with respect to each authorized fund established pursuant to Section 76100 or 76101, for every parking offense where a parking penalty, fine, or forfeiture is imposed, an added penalty of two dollars and fifty cents ($2.50) shall be included in the total penalty, fine, or forfeiture. Except as provided in subdivision (c), for each parking case collected in the courts of the county, the county treasurer shall place in each authorized fund two dollars and fifty cents ($2.50). These moneys shall be taken from fines and forfeitures deposited with the county treasurer prior to any division pursuant to Section 1462.3 or 1463.009 of the Penal Code. The judges of the county shall increase the bail schedule amounts as appropriate to reflect the added penalty provided for by this section. In those cities, districts, or other issuing agencies which elect to accept

parking penalties, and otherwise process parking violations pursuant to Article 3 (commencing with Section 40200) of Chapter 1 of Division 17 of the Vehicle Code, that city, district, or issuing agency shall observe the increased bail amounts as established by the court reflecting the added penalty provided for by this section. Each agency which elects to process parking violations shall pay to the county treasurer two dollars and fifty cents ($2.50) for each fund for each parking penalty collected on each violation which is not filed in court. Those payments to the county treasurer shall be made monthly, and the county treasurer shall deposit all those sums in the authorized fund. No issuing agency shall be required to contribute revenues to any fund in excess of those revenues generated from the surcharges established in the resolution adopted pursuant to this chapter, except as otherwise agreed upon by the local governmental entities involved.

(c) The county treasurer shall deposit one dollar ($1) of every two dollars and fifty cents ($2.50) collected pursuant to subdivision (b) into the general fund of the county.

(d) The authority to impose the two-dollar-and-fifty-cent ($2.50) penalty authorized by subdivision (b) shall be reduced to one dollar ($1.00) as of the date of transfer of responsibility for facilities from the county to the Judicial Council pursuant to Article 3 (commencing with Section 70321) of Chapter 5.1, except as money is needed to pay for construction provided for in Section 76100 and undertaken prior to the transfer of responsibility for facilities from the county to the Judicial Council.

(e) The seven dollar ($7) additional penalty authorized by subdivision (a) shall be reduced in each county by the additional penalty amount assessed by the county for the local courthouse construction fund established by Section 76100 as of January 1, 1998, when the money in that fund is transferred to the state under Section 70402. The amount each county shall charge as an additional penalty under this section shall be as follows:

Alameda	$5.00	Marin	$5.00	San Luis Obispo	$6.00
Alpine	$5.00	Mariposa	$2.00	San Mateo	$4.75
Amador	$5.00	Mendocino	$7.00	Santa Barbara	$3.50
Butte	$6.00	Merced	$5.00	Santa Clara	$5.50
Calaveras	$3.00	Modoc	$4.00	Santa Cruz	$7.00
Colusa	$6.00	Mono	$5.00	Shasta	$3.50
Contra Costa	$5.00	Monterey	$5.00	Sierra	$7.00
Del Norte	$5.00	Napa	$3.00	Siskiyou	$5.00
El Dorado	$5.00	Nevada	$5.00	Solano	$5.00
Fresno	$5.00	Orange	$3.50	Sonoma	$5.00
Glenn	$4.06	Placer	$4.75	Stanislaus	$5.00

Humboldt	$5.00	Plumas	$5.00	Sutter	$3.00
Imperial	$6.00	Riverside	$4.60	Tehama	$7.00
Inyo	$4.00	Sacramento	$5.00	Trinity	$4.26
Kern	$7.00	San Benito	$5.00	Tulare	$5.00
Kings	$7.00	San Bernardino	$5.00	Tuolumne	$5.00
Lake	$7.00	San Diego	$5.00	Ventura	$5.00
Lassen	$2.00	San Francisco	$6.99	Yolo	$7.00
Los Angeles	$5.00	San Joaquin	$3.75	Yuba	$3.00
Madera	$4.50				

SEC. 6. Section 76100 of the Government Code is amended to read:

76100. (a) Except as provided in Article 3 (commencing with Section 76200), for the purpose of assisting any county in the acquisition, rehabilitation, construction, and financing of courtrooms or of a courtroom building or buildings containing facilities necessary or incidental to the operation of the justice system, the board of supervisors may establish in the county treasury a Courthouse Construction Fund into which shall be deposited the amounts specified in the resolutions adopted by the board of supervisors in accordance with this chapter. The moneys of the Courthouse Construction Fund shall be payable only for the purposes set forth in subdivision (b) and at the time necessary therefor.

(b) In conjunction with the acquisition, rehabilitation, construction, or financing of court buildings referred to in subdivision (a), the county may use the moneys of the Courthouse Construction Fund for either of the following:

(1) To rehabilitate existing courtrooms or an existing courtroom building or buildings for other uses if a new courtroom or a courtroom building or buildings are acquired, constructed, or financed.

(2) To acquire, rehabilitate, construct, or finance excess courtrooms or an excess courtroom building or buildings, if that excess is anticipated to be needed at a later time.

(c) Any excess courtroom or excess courtroom building or buildings that are acquired, rehabilitated, constructed, or financed pursuant to subdivision (b) may be leased or rented for uses other than the operation of the justice system until the excess courtrooms or excess courtroom building or buildings are needed for the operation of the justice system. Any amount received as lease or rental payments pursuant to this subdivision shall be deposited in the Courthouse Construction Fund.

(d) The fund moneys shall be held by the county treasurer separate from any funds subject to transfer or division pursuant to Section 1463 of the Penal Code.

SEC. 7. Section 76101 of the Government Code is amended to read:

76101. (a) Except as provided in Article 3 (commencing with Section 76200), for the purpose of assisting any county in the construction, reconstruction, expansion, improvement, operation, or maintenance of county criminal justice and court facilities and for improvement of criminal justice automated information systems, the board of supervisors may by resolution establish in the county treasury a Criminal Justice Facilities Construction Fund. All amounts collected pursuant to resolutions adopted by a county in accordance with this chapter shall be deposited into the fund. The moneys of the Criminal Justice Facilities Construction Fund shall be payable only for the purposes set forth in subdivision (b) and at the time necessary therefor.

(b) For purposes of this chapter, ''county criminal justice facilities'' includes, but is not limited to, jails, women's centers, detention facilities, juvenile halls, and courtrooms. Any new jail, or any addition to an existing jail that provides new cells or beds, which is constructed with moneys from the Criminal Justice Facilities Construction Fund shall comply with the ''Minimum Standards for Local Detention Facilities'' promulgated by the Board of Corrections.

(c) The fund moneys shall be held by the county treasurer separate from any funds subject to transfer or division pursuant to Section 1463 of the Penal Code.

SEC. 8. Section 76223 is added to the Government Code, to read:

76223. Notwithstanding any other provision of law, the following conditions pertain to the construction of court facilities in Merced County by the County of Merced for any construction pursuant to a written agreement entered into prior to January 1, 2004, between the board of supervisors and the presiding judge of the superior court:

(a) Revenue received in Merced County from civil assessments for Failure to Appear, pursuant to Section 1214.1 of the Penal Code, shall be available, in an annual amount not to exceed the amount agreed upon by the board of supervisors and the presiding judge of the superior court, for the purpose of augmenting other funds made available for construction.

(b) The presiding judge of the superior court may agree to make available court funds, up to a stated amount, other than funds received from the Trial Court Trust Fund or other state sources, in the courthouse construction fund.

(c) The total amounts deposited under subdivision (a) may not exceed in any fiscal year the amount payable on the construction costs less (1) any amounts paid by the courthouse construction fund and (2) any other amounts paid from other sources except for any amounts paid pursuant to subdivision (b).

(d) The total amounts deposited under subdivision (b) shall not exceed in any fiscal year the amount payable on the construction costs

less (1) any amounts paid by the courthouse construction fund, (2) any amounts paid pursuant to subdivision (a) of this section, and (3) any other amounts paid from other sources except for any amounts paid pursuant to subdivision (b).

(e) If legislation is passed and becomes effective transferring the responsibility for court facilities to the state, and the legislation permits the transfer of the bonded indebtedness or other encumbrance on court facilities together with revenue sources for payment of the bonded indebtedness or other encumbrance, the revenue sources provided for by this section may also be transferred to the state.

(f) As used in this section, the costs of construction also includes the payment on the bonded indebtedness or other encumbrance used to finance the construction.

SEC. 9. Section 70373.5 as added to the Government Code by this act shall only become operative if Assembly Bill 3000 or Senate Bill 1843, or both, of the 2001–02 Regular Session is enacted to add Section 68087 to the Government Code.

SEC. 10. 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 1083

An act relating to the University of California.

[Approved by Governor September 29, 2002. Filed with Secretary of State September 29, 2002.]

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

SECTION 1. (a) The Regents of the University of California are requested to identify those resources and efforts that currently exist, at a statewide level, within the university for the development and coordination of curriculum and research on diversity in order to accomplish the following goals:

(1) Meet the social and economic needs of California through the development and coordination of curriculum and research on diversity on a continuing basis.

(2) Provide for the identification and open discussion of significant public policy issues relative to population and sociological trends.

(3) Provide for the creation of a coordinating program that draws upon the multidisciplinary, multicampus, and cross segmental expertise of faculty and administration from a wide variety of professional schools.

(4) Provide for the development of programs and activities that engage in public services in cooperation with the private sector and with California's other public and independent colleges and universities.

(b) The Regents of the University of California are requested to identify and recommend any new programmatic or funding structures that may be necessary to accomplish the goals set forth in subdivision (a) and to report the findings identified under subdivision (a) and the recommendations developed under this subdivision to the Legislature on or before March 1, 2003.

(c) It is the intent of the Legislature that the findings and recommendations developed pursuant to subdivision (b) address the recommendation by the Senate Select Committee on College and University Admissions and Outreach that the University of California create a research institute on diversity.

CHAPTER 1084

An act to amend Sections 17584, 17591, and 17592.5 of the Education Code, relating to school facilities.

[Approved by Governor September 29, 2002. Filed with Secretary of State September 29, 2002.]

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

SECTION 1. Section 17584 of the Education Code is amended to read:

17584. (a) 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 second prior fiscal year revenue limit average daily attendance multiplied by the average, per unit of second prior fiscal year 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.

(b) In order to be eligible to receive state aid pursuant to subdivision (a), no district shall be required to budget from local district funds an amount greater than $^1/_2$ percent of the district's second prior fiscal year revenue limit average daily attendance, multiplied by the average, per unit of second prior fiscal year 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.

(c) The apportionment of funds specified in subdivision (a) shall be made by the State Allocation Board after December 1 of each fiscal year.

SEC. 2. Section 17591 of the Education Code is amended to read:

17591. Each district desiring an apportionment pursuant to Section 17584 shall file with the State Allocation Board and receive approval of a five-year plan of the maintenance needs of the district over that five-year period. This plan may be amended from time to time. Any expenditure of funds from the district deferred maintenance fund shall conform to the plan approved by the State Allocation Board.

SEC. 3. Section 17592.5 of the Education Code is amended to read:

17592.5. The Joint Powers Southern California Regional Occupational Center and the Joint Powers Central County Occupational Center shall be deemed to be school districts for purposes of Sections 17582 to 17592, inclusive, and for the purposes of Section 17584.

CHAPTER 1085

An act to amend Sections 800, 801, 801.1, 802, 803.1, 2001, 2008, 2013, 2020, 2027, 2052, 2227, 2234, 2313, 2350, 2435, 2507, 3504, and 3516 of, to add Sections 802.3, 2135.5, 2220.05, 2220.08, 2246, and 3519.5 to, to add Chapter 1.6 (commencing with Section 920) to Division 2 of, to add and repeal Sections 2220.1 and 3516.1 of, and to repeal Sections 2026 and 2053 of, the Business and Professions Code, and to amend Section 11371 of the Government Code, relating to healing arts, and making an appropriation therefor.

[Approved by Governor September 29, 2002. Filed with Secretary of State September 29, 2002.]

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

SECTION 1. Section 800 of the Business and Professions Code is amended to read:

800. (a) The Medical Board of California, the Board of Psychology, the Dental Board of California, the Osteopathic Medical Board of California, the State Board of Chiropractic Examiners, the Board of Registered Nursing, the Board of Vocational Nursing and Psychiatric Technicians, the State Board of Optometry, the Veterinary Medical Board, the Board of Behavioral Sciences, and the California State Board of Pharmacy shall each separately create and maintain a central file of the names of all persons who hold a license, certificate, or similar authority from that board. Each central file shall be created and maintained to provide an individual historical record for each licensee with respect to the following information:

(1) Any conviction of a crime in this or any other state that constitutes unprofessional conduct pursuant to the reporting requirements of Section 803.

(2) Any judgment or settlement requiring the licensee or his or her insurer to pay any amount of damages in excess of three thousand dollars ($3,000) for any claim that injury or death was proximately caused by the licensee's negligence, error, or omission in practice, or by rendering unauthorized professional services, pursuant to the reporting requirements of Section 801 or 802.

(3) Any public complaints for which provision is made pursuant to subdivision (b).

(4) Disciplinary information reported pursuant to Section 805.

(b) Each board shall prescribe and promulgate forms on which members of the public and other licensees or certificate holders may file written complaints to the board alleging any act of misconduct in, or connected with, the performance of professional services by the licensee.

If a board, or division thereof, a committee, or a panel has failed to act upon a complaint or report within five years, or has found that the complaint or report is without merit, the central file shall be purged of information relating to the complaint or report.

Notwithstanding this subdivision, the Board of Psychology, the Board of Behavioral Sciences, and the Respiratory Care Board of California shall maintain complaints or reports as long as each board deems necessary.

(c) The contents of any central file that are not public records under any other provision of law shall be confidential except that the licensee involved, or his or her counsel or representative, shall have the right to inspect and have copies made of his or her complete file except for the

provision that may disclose the identity of an information source. For the purposes of this section, a board may protect an information source by providing a copy of the material with only those deletions necessary to protect the identity of the source or by providing a comprehensive summary of the substance of the material. Whichever method is used, the board shall ensure that full disclosure is made to the subject of any personal information that could reasonably in any way reflect or convey anything detrimental, disparaging, or threatening to a licensee's reputation, rights, benefits, privileges, or qualifications, or be used by a board to make a determination that would affect a licensee's rights, benefits, privileges, or qualifications. The information required to be disclosed pursuant to Section 803.1 shall not be considered among the contents of a central file for the purposes of this subdivision.

The licensee may, but is not required to, submit any additional exculpatory or explanatory statement or other information that the board shall include in the central file.

Each board may permit any law enforcement or regulatory agency when required for an investigation of unlawful activity or for licensing, certification, or regulatory purposes to inspect and have copies made of that licensee's file, unless the disclosure is otherwise prohibited by law.

These disclosures shall effect no change in the confidential status of these records.

SEC. 2. Section 801 of the Business and Professions Code is amended to read:

801. (a) Every insurer providing professional liability insurance to a person who holds a license, certificate, or similar authority from or under any agency mentioned in subdivision (a) of Section 800 (except as provided in subdivisions (b), (c), and (d)) shall send a complete report to that agency as to any settlement or arbitration award over three thousand dollars ($3,000) of a claim or action for damages for death or personal injury caused by that person's negligence, error, or omission in practice, or by his or her rendering of unauthorized professional services. The report shall be sent within 30 days after the written settlement agreement has been reduced to writing and signed by all parties thereto or within 30 days after service of the arbitration award on the parties.

(b) Every insurer providing professional liability insurance to a physician and surgeon licensed pursuant to Chapter 5 (commencing with Section 2000) or the Osteopathic Initiative Act shall send a complete report to the Medical Board of California or the Osteopathic Medical Board of California, as appropriate, as to any settlement over thirty thousand dollars ($30,000); or arbitration award of any amount; or civil judgment of any amount, whether or not vacated by a settlement after entry of the judgment, that was not reversed on appeal; of a claim or action for damages for death or personal injury caused by that person's

negligence, error, or omission in practice, or by his or her rendering of unauthorized professional services. A settlement over thirty thousand dollars ($30,000) shall also be reported if the settlement is based on the licensee's negligence, error, or omission in practice, or by the licensee's rendering of unauthorized professional services, and a party to the settlement is a corporation, medical group, partnership, or other corporate entity in which the licensee has an ownership interest or that employs or contracts with the licensee. The report shall be sent within 30 days after the written settlement agreement has been reduced to writing and signed by all parties thereto, within 30 days after service of the arbitration award on the parties, or within 30 days after the date of entry of the civil judgment.

(c) Every insurer providing professional liability insurance to a person licensed pursuant to Chapter 13 (commencing with Section 4980) or Chapter 14 (commencing with Section 4990) shall send a complete report to the Board of Behavioral Science Examiners as to any settlement or arbitration award over ten thousand dollars ($10,000) of a claim or action for damages for death or personal injury caused by that person's negligence, error, or omission in practice, or by his or her rendering of unauthorized professional services. The report shall be sent within 30 days after the written settlement agreement has been reduced to writing and signed by all parties thereto or within 30 days after service of the arbitration award on the parties.

(d) Every insurer providing professional liability insurance to a dentist licensed pursuant to Chapter 4 (commencing with Section 1600) shall send a complete report to the Dental Board of California as to any settlement or arbitration award over ten thousand dollars ($10,000) of a claim or action for damages for death or personal injury caused by that person's negligence, error, or omission in practice, or rendering of unauthorized professional services. The report shall be sent within 30 days after the written settlement agreement has been reduced to writing and signed by all parties thereto or within 30 days after service of the arbitration award on the parties.

(e) The insurer shall notify the claimant, or if the claimant is represented by counsel, the insurer shall notify the claimant's attorney, that the report required by subdivision (a), (b), (c), or (d) has been sent to the agency. If the attorney has not received this notice within 45 days after the settlement was reduced to writing and signed by all of the parties, the arbitration award was served on the parties, or the date of entry of the civil judgment, the attorney shall make the report to the agency.

(f) Notwithstanding any other provision of law, no insurer shall enter into a settlement without the written consent of the insured, except that this prohibition shall not void any settlement entered into without that

written consent. The requirement of written consent shall only be waived by both the insured and the insurer. This section shall only apply to a settlement on a policy of insurance executed or renewed on or after January 1, 1971.

SEC. 3. Section 801.1 of the Business and Professions Code is amended to read:

801.1. (a) Every state or local governmental agency that self insures a person who holds a license, certificate or similar authority from or under any 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) shall send a complete report to that agency as to any settlement or arbitration award over three thousand dollars ($3,000) of a claim or action for damages for death or personal injury caused by that person's negligence, error or omission in practice, or rendering of unauthorized professional services. The report shall be sent within 30 days after the written settlement agreement has been reduced to writing and signed by all parties thereto or within 30 days after service of the arbitration award on the parties.

(b) Every state or local governmental agency that self-insures a physician and surgeon licensed pursuant to Chapter 5 (commencing with Section 2000) of Division 2 or the Osteopathic Initiative Act shall send a complete report to the Medical Board of California or the Osteopathic Medical Board of California, as appropriate, as to any settlement or arbitration award over thirty thousand dollars ($30,000) of a claim or action for damages for death or personal injury caused by that person's negligence, error or omission in practice, or rendering of unauthorized professional services. A settlement over thirty thousand dollars ($30,000) shall also be reported if the settlement is based on the licensee's negligence, error, or omission in practice or by his or her rendering of unauthorized professional services, and a party to the settlement is a corporation, medical group, partnership, or other corporate entity in which the licensee has an ownership interest or that employs or contracts with the licensee. The report shall be sent within 30 days after the written settlement agreement has been reduced to writing and signed by all parties thereto or within 30 days after service of the arbitration award on the parties.

(c) Every state or local governmental agency that self-insures a person licensed pursuant to Chapter 13 (commencing with Section 4980) or Chapter 14 (commencing with Section 4990) shall send a complete report to the Board of Behavioral Science Examiners as to any settlement or arbitration award over ten thousand dollars ($10,000) of a claim or action for damages for death or personal injury caused by that person's negligence, error, or omission in practice, or rendering of

unauthorized professional services. The report shall be sent within 30 days after the written settlement agreement has been reduced to writing and signed by all parties thereto or within 30 days after service of the arbitration award on the parties.

SEC. 4. 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 by 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 by 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 settlement over thirty thousand dollars ($30,000) shall also be reported if the settlement is based on the licensee's negligence, error, or omission in practice or his or her rendering of unauthorized professional services, and a party to the settlement is a corporation, medical group, partnership, or other corporate entity in which the licensee has an ownership interest or that employs or contracts with the licensee. 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) nor 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 by the unauthorized rendering of professional services, by a marriage and family therapist 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 and family therapist 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) nor 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. 5. Section 802.3 is added to the Business and Professions Code, to read:

802.3. Every report of a settlement required by Sections 801, 801.1, and 802 shall specify the specialty or subspecialty of the physician and surgeon involved.

SEC. 6. Section 803.1 of the Business and Professions Code is amended to read:

803.1. (a) Notwithstanding any other provision of law, the Medical Board of California, the Osteopathic Medical Board of California, and the California Board of Podiatric Medicine shall disclose to an inquiring member of the public information regarding any enforcement actions taken against a licensee by either board or by another state or jurisdiction, including all of the following:

(1) Temporary restraining orders issued.

(2) Interim suspension orders issued.

(3) Revocations, suspensions, probations, or limitations on practice ordered by the board, including those made part of a probationary order or stipulated agreement.

(4) Public letters of reprimand issued.

(5) Infractions, citations, or fines imposed.

(b) Notwithstanding any other provision of law, in addition to the information provided in subdivision (a), the Medical Board of California, the Osteopathic Medical Board of California, and the California Board of Podiatric Medicine shall disclose to an inquiring member of the public all of the following:

(1) Civil judgments in any amount, whether or not vacated by a settlement after entry of the judgment, that were not reversed on appeal and arbitration awards in any amount of a claim or action for damages for death or personal injury caused by the physician and surgeon's negligence, error, or omission in practice, or by his or her rendering of unauthorized professional services.

(2) (A) All settlements in the possession, custody, or control of the board shall be disclosed for a licensee in the low-risk category if there are three or more settlements for that licensee within the last 10 years, except for settlements by a licensee regardless of the amount paid where (i) the settlement is made as a part of the settlement of a class claim, (ii)

the licensee paid in settlement of the class claim the same amount as the other licensees in the same class or similarly situated licensees in the same class, and (iii) the settlement was paid in the context of a case where the complaint that alleged class liability on behalf of the licensee also alleged a products liability class action cause of action. All settlements in the possession, custody, or control of the board shall be disclosed for a licensee in the high-risk category if there are four or more settlements for that licensee within the last 10 years except for settlements by a licensee regardless of the amount paid where (i) the settlement is made as a part of the settlement of a class claim, (ii) the licensee paid in settlement of the class claim the same amount as the other licensees in the same class or similarly situated licensees in the same class, and (iii) the settlement was paid in the context of a case where the complaint that alleged class liability on behalf of the licensee also alleged a products liability class action cause of action. Classification of a licensee in either a ''high-risk category'' or a ''low-risk category'' depends upon the specialty or subspecialty practiced by the licensee and the designation assigned to that specialty or subspecialty by the Medical Board of California, as described in subdivision (e). For the purposes of this paragraph, ''settlement'' means a settlement of an action described in paragraph (1) entered into by the licensee on or after January 1, 2003, in an amount of thirty thousand dollars ($30,000) or more.

(B) The board shall not disclose the actual dollar amount of a settlement but shall put the number and amount of the settlement in context by doing the following:

(i) Comparing the settlement amount to the experience of other licensees within the same specialty or subspecialty, indicating if it is below average, average, or above average for the most recent 10-year period.

(ii) Reporting the number of years the licensee has been in practice.

(iii) Reporting the total number of licensees in that specialty or subspecialty, the number of those who have entered into a settlement agreement, and the percentage that number represents of the total number of licensees in the specialty or subspecialty.

(3) Current American Board of Medical Specialty certification or board equivalent as certified by the Medical Board of California, the Osteopathic Medical Board of California, or the California Board of Podiatric Medicine.

(4) Approved postgraduate training.

(5) Status of the license of a licensee. By January 1, 2004, the Medical Board of California, the Osteopathic Medical Board of California, and the California Board of Podiatric Medicine shall adopt regulations defining the status of a licensee. The board shall employ this definition when disclosing the status of a licensee pursuant to Section 2027.

(6) Any summaries of hospital disciplinary actions that result in the termination or revocation of a licensee's staff privileges for medical disciplinary cause or reason.

(c) The Medical Board of California, the Osteopathic Medical Board of California, 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 an inquiring member of the public because that information is unreliable or not sufficiently related to the licensee's professional practice. The Medical Board of California, the Osteopathic Medical Board of California, and the California Board of Podiatric Medicine shall include the following statement when disclosing information concerning a settlement:

''Some studies have shown that there is no significant correlation between malpractice history and a doctor's competence. At the same time, the State of California believes that consumers should have access to malpractice information. In these profiles, the State of California has given you information about both the malpractice settlement history for the doctor's specialty and the doctor's history of settlement payments only if in the last 10 years, the doctor, if in a low-risk specialty, has three or more settlements or the doctor, if in a high-risk specialty, has four or more settlements. The State of California has excluded some class action lawsuits because those cases are commonly related to systems issues such as product liability, rather than questions of individual professional competence and because they are brought on a class basis where the economic incentive for settlement is great. The State of California has placed payment amounts into three statistical categories: below average, average, and above average compared to others in the doctor's specialty. To make the best health care decisions, you should view this information in perspective. You could miss an opportunity for high-quality care by selecting a doctor based solely on malpractice history.

When considering malpractice data, please keep in mind:

Malpractice histories tend to vary by specialty. Some specialties are more likely than others to be the subject of litigation. This report compares doctors only to the members of their specialty, not to all doctors, in order to make an individual doctor's history more meaningful.

This report reflects data only for settlements made on or after January 1, 2003. Moreover, it includes information concerning those settlements for a 10-year period only. Therefore, you should know that a doctor may have made settlements in the 10 years immediately preceding January 1, 2003, that are not included in this report. After January 1, 2013, for doctors practicing less than 10 years, the data covers their total years of practice. You should take into account the effective date of settlement

disclosure as well as how long the doctor has been in practice when considering malpractice averages.

The incident causing the malpractice claim may have happened years before a payment is finally made. Sometimes, it takes a long time for a malpractice lawsuit to settle. Some doctors work primarily with high-risk patients. These doctors may have malpractice settlement histories that are higher than average because they specialize in cases or patients who are at very high risk for problems.

Settlement of a claim may occur for a variety of reasons that do not necessarily reflect negatively on the professional competence or conduct of the doctor. A payment in settlement of a medical malpractice action or claim should not be construed as creating a presumption that medical malpractice has occurred.

You may wish to discuss information in this report and the general issue of malpractice with your doctor.''

(d) The Medical Board of California, the Osteopathic Medical Board of California, and the California Board of Podiatric Medicine shall, by regulation, develop standard terminology that accurately describes the different types of disciplinary filings and actions to take against a licensee as described in paragraphs (1) to (5), inclusive, of subdivision (a). In providing the public with information about a licensee via the Internet pursuant to Section 2027, the Medical Board of California, the Osteopathic Medical Board of California, and the California Board of Podiatric Medicine shall not use the terms ''enforcement,'' ''discipline,'' or similar language implying a sanction unless the physician and surgeon has been the subject of one of the actions described in paragraphs (1) to (5), inclusive, of subdivision (a).

(e) The Medical Board of California shall adopt regulations no later than July 1, 2003, designating each specialty and subspecialty practice area as either high risk or low risk. In promulgating these regulations, the board shall consult with commercial underwriters of medical malpractice insurance companies, health care systems that self-insure physicians and surgeons, and representatives of the California medical specialty societies. The board shall utilize the carriers' statewide data to establish the two risk categories and the averages required by subparagraph (B) of paragraph (2) of subdivision (b). Prior to issuing regulations, the board shall convene public meetings with the medical malpractice carriers, self-insurers, and specialty representatives.

(f) The Medical Board of California, the Osteopathic Medical Board of California, and the California Board of Podiatric Medicine shall provide each licensee with a copy of the text of any proposed public disclosure authorized by this section prior to release of the disclosure to the public. The licensee shall have 10 working days from the date the board provides the copy of the proposed public disclosure to propose

corrections of factual inaccuracies. Nothing in this section shall prevent the board from disclosing information to the public prior to the expiration of the 10-day period.

(g) Pursuant to subparagraph (A) of paragraph (2) of subdivision (b), the specialty or subspecialty information required by this section shall group physicians by specialty board recognized pursuant to paragraph (5) of subdivision (h) of Section 651 unless a different grouping would be more valid and the board, in its statement of reasons for its regulations, explains why the validity of the grouping would be more valid.

SEC. 7. Chapter 1.6 (commencing with Section 920) is added to Division 2 of the Business and Professions Code, to read:

CHAPTER 1.6. HEALTH CARE PROFESSIONAL DISASTER RESPONSE ACT

920. This chapter shall be known and may be cited as the Health Care Professional Disaster Response Act.

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

(1) In times of national or state disasters, a shortage of qualified health care practitioners may exist in areas throughout the state where they are desperately required to respond to public health emergencies.

(2) Health care practitioners with lapsed or inactive licenses could potentially serve in those areas where a shortage of qualified health care practitioners exists, if licensing requirements were streamlined and fees curtailed.

(b) It is, therefore, the intent of the Legislature to address these matters through the provisions of the Health Care Professional Disaster Response Act.

922. (a) A physician and surgeon who satisfies the requirements of Section 2439 but whose license has been expired for less than five years may be licensed under this chapter.

(b) To be licensed under this chapter, a physician and surgeon shall complete an application, on a form prescribed by the Medical Board of California, and submit it to the board, along with the following:

(1) Documentation that the applicant has completed the continuing education requirements described in Article 10 (commencing with Section 2190) of Chapter 5 for each renewal period during which the applicant was not licensed.

(2) A complete set of fingerprints as required by Sections 144 and 2082, together with the fee required for processing those fingerprints.

(c) An applicant shall not be required to pay any licensing, delinquency, or penalty fees for the issuance of a license under this chapter.

SEC. 8. Section 2001 of the Business and Professions Code is amended to read:

2001. There is in the Department of Consumer Affairs a Medical Board of California that consists of 21 members, nine of whom shall be public members.

The Governor shall appoint 19 members to the board, subject to confirmation by the Senate, seven of whom shall be public members. The Senate Rules Committee and the Speaker of the Assembly shall each appoint a public member, and their initial appointment shall be made to fill, respectively, the first and second public member vacancies that occur on or after January 1, 1983.

This section shall become inoperative on July 1, 2005, and, as of January 1, 2006, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 2006, deletes or extends the dates on which it becomes inoperative and is repealed. The repeal of this section renders the board subject to the review required by Division 1.2 (commencing with Section 473).

SEC. 9. Section 2008 of the Business and Professions Code is amended to read:

2008. The Division of Medical Quality shall consist of 14 members of the board, six of whom shall be public members. The Division of Licensing shall consist of seven members, three of whom shall be public members.

Each member appointed to the board shall be assigned by the Governor to a specific division, except that, commencing July 1, 1994, those members of the board who prior to July 1, 1994, were assigned to the Division of Allied Health Professions shall be members of the Division of Medical Quality.

SEC. 10. Section 2013 of the Business and Professions Code is amended to read:

2013. (a) The board and each division may convene from time to time as deemed necessary by the board or a division.

(b) Eight members of the Division of Medical Quality, and four members of the Division of Licensing, shall constitute a quorum for the transaction of business at any division meeting. Four members of a panel of the Division of Medical Quality shall constitute a quorum for the transaction of business at any meeting of the panel. Eleven members shall constitute a quorum for the transaction of business at any board meeting.

(c) It shall require the affirmative vote of a majority of those members present at a division, panel, or board meeting, those members constituting at least a quorum, to pass any motion, resolution, or measure. A decision by a panel of the Division of Medical Quality to discipline a physician and surgeon shall require an affirmative vote, at

a meeting or by mail, of a majority of the members of that panel; except that a decision to revoke the certificate of a physician and surgeon shall require the affirmative vote of four members of that panel.

SEC. 11. Section 2020 of the Business and Professions Code is amended to read:

2020. The board may employ an executive director exempt from the provisions of the Civil Service Act and may also employ investigators, legal counsel, medical consultants, and other assistance as it may deem necessary to carry into effect this chapter. The board may fix the compensation to be paid for services subject to the provisions of applicable state laws and regulations and may incur other expenses as it may deem necessary. Investigators employed by the board shall be provided special training in investigating medical practice activities.

The Attorney General shall act as legal counsel for the board for any judicial and administrative proceedings and his or her services shall be a charge against it.

This section shall become inoperative on July 1, 2005, and, as of January 1, 2006, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 2006, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 12. Section 2026 of the Business and Professions Code is repealed.

SEC. 13. Section 2027 of the Business and Professions Code is amended to read:

2027. (a) On or after July 1, 2001, unless otherwise authorized by the Department of Information Technology pursuant to Executive Order D-3-99, the board shall post on the Internet the following information in its possession, custody, or control regarding licensed physicians and surgeons:

(1) With regard to the status of the license, whether or not the licensee is in good standing, subject to a temporary restraining order (TRO), subject to an interim suspension order (ISO), or subject to any of the enforcement actions set forth in Section 803.1.

(2) With regard to prior discipline, whether or not the licensee has been subject to discipline by the board of another state or jurisdiction, as described in Section 803.1.

(3) Any felony convictions reported to the board after January 3, 1991.

(4) All current accusations filed by the Attorney General, including those accusations that are on appeal. For purposes of this paragraph, ''current accusation'' shall mean an accusation that has not been dismissed, withdrawn, or settled, and has not been finally decided upon by an administrative law judge and the Medical Board of California unless an appeal of that decision is pending.

(5) Any malpractice judgment or arbitration award reported to the board after January 1, 1993.

(6) Any hospital disciplinary actions that resulted in the termination or revocation of a licensee's hospital staff privileges for a medical disciplinary cause or reason.

(7) Appropriate disclaimers and explanatory statements to accompany the above information, including an explanation of what types of information are not disclosed. These disclaimers and statements shall be developed by the board and shall be adopted by regulation.

(8) Any information required to be disclosed pursuant to Section 803.1.

(b) (1) From January 1, 2003, the information described in paragraphs (1) (other than whether or not the licensee is in good standing), (2), (4), (5), and (7) of subdivision (a) shall remain posted for a period of 10 years from the date the board obtains possession, custody, or control of the information, and after the end of that period shall be removed from being posted on the board's Internet Web site. Information in the possession, custody, or control of the board prior to January 1, 2003, shall be posted for a period of 10 years from January 1, 2003. Settlement information shall be posted as described in paragraph (2) of subdivision (b) of Section 803.1.

(2) The information described in paragraphs (3) and (6) of subdivision (a) shall not be removed from being posted on the board's Internet Web site. Notwithstanding the provisions of this paragraph, if a licensee's hospital staff privileges are restored and the licensee notifies the board of the restoration, the information pertaining to the termination or revocation of those privileges, as described in paragraph (6) of subdivision (a), shall remain posted for a period of 10 years from the restoration date of the privileges, and at the end of that period shall be removed from being posted on the board's Internet Web site.

(c) The board shall provide links to other Web sites on the Internet that provide information on board certifications that meet the requirements of subdivision (b) of Section 651. The board may provide links to other Web sites on the Internet that provide information on health care service plans, health insurers, hospitals, or other facilities. The board may also provide links to any other sites that would provide information on the affiliations of licensed physicians and surgeons.

SEC. 14. Section 2052 of the Business and Professions Code is amended to read:

2052. (a) Notwithstanding Section 146, any person who practices or attempts to practice, or who advertises or holds himself or herself out as practicing, any system or mode of treating the sick or afflicted in this state, or who diagnoses, treats, operates for, or prescribes for any ailment, blemish, deformity, disease, disfigurement, disorder, injury, or

other physical or mental condition of any person, without having at the time of so doing a valid, unrevoked, or unsuspended certificate as provided in this chapter or without being authorized to perform the act pursuant to a certificate obtained in accordance with some other provision of law is guilty of a public offense, punishable by a fine not exceeding ten thousand dollars ($10,000), by imprisonment in the state prison, by imprisonment in a county jail not exceeding one year, or by both the fine and either imprisonment.

(b) Any person who conspires with or aids or abets another to commit any act described in subdivision (a) is guilty of a public offense, subject to the punishment described in that subdivision.

(c) The remedy provided in this section shall not preclude any other remedy provided by law.

SEC. 15. Section 2053 of the Business and Professions Code is repealed.

SEC. 16. Section 2135.5 is added to the Business and Professions Code, to read:

2135.5. Upon review and recommendation, the Division of Licensing may determine that an applicant for a physician and surgeon's certificate has satisfied the medical curriculum requirements of Section 2089, the clinical instruction requirements of Sections 2089.5 and 2089.7, and the examination requirements of Section 2170 if the applicant meets all of the following criteria:

(a) He or she holds an unlimited and unrestricted license as a physician and surgeon in another state.

(b) He or she has been licensed by that state to practice as a physician and surgeon.

(c) He or she is certified by a specialty board that is a member board of the American Board of Medical Specialties.

(d) He or she has not been the subject of a denial of licensure under Section 480.

(e) He or she has not graduated from a school that has been disapproved by the division.

SEC. 17. Section 2220.05 is added to the Business and Professions Code, to read:

2220.05. (a) In order to ensure that its resources are maximized for the protection of the public, the Medical Board of California shall prioritize its investigative and prosecutorial resources to ensure that physicians and surgeons representing the greatest threat of harm are identified and disciplined expeditiously. Cases involving any of the following allegations shall be handled on a priority basis, as follows, with the highest priority being given to cases in the first paragraph:

(1) Gross negligence, incompetence, or repeated negligent acts that involve death or serious bodily injury to one or more patients, such that the physician and surgeon represents a danger to the public.

(2) Drug or alcohol abuse by a physician and surgeon involving death or serious bodily injury to a patient.

(3) Repeated acts of clearly excessive prescribing, furnishing, or administering of controlled substances, or repeated acts of prescribing, dispensing, or furnishing of controlled substances without a good faith prior examination of the patient and medical reason therefor. However, in no event shall a physician and surgeon prescribing, furnishing, or administering controlled substances for intractable pain consistent with lawful prescribing, including, but not limited to, Sections 725, 2241.5, and 2241.6 of this code and Sections 11159.2 and 124961 of the Health and Safety Code, be prosecuted for excessive prescribing and prompt review of the applicability of these provisions shall be made in any complaint that may implicate these provisions.

(4) Sexual misconduct with one or more patients during a course of treatment or an examination.

(5) Practicing medicine while under the influence of drugs or alcohol.

(b) The board may by regulation prioritize cases involving an allegation of conduct that is not described in subdivision (a). Those cases prioritized by regulation shall not be assigned a priority equal to or higher than the priorities established in subdivision (a).

(c) The Medical Board of California shall indicate in its annual report mandated by Section 2312 the number of temporary restraining orders, interim suspension orders, and disciplinary actions that are taken in each priority category specified in subdivisions (a) and (b).

SEC. 18. Section 2220.08 is added to the Business and Professions Code, to read:

2220.08. (a) Except for reports received by the board pursuant to Section 805 that may be treated as complaints by the board, any complaint determined to involve quality of care, before referral to a field office for further investigation, shall meet the following criteria:

(1) It shall be reviewed by one or more medical experts with the pertinent education, training, and expertise to evaluate the specific standard of care issues raised by the complaint to determine if further field investigation is required.

(2) It shall include the review of the following, which shall be requested by the board:

(A) Relevant patient records.

(B) The statement or explanation of the care and treatment provided by the physician and surgeon.

(C) Any additional expert testimony or literature provided by the physician and surgeon.

(D) Any additional facts or information requested by the medical expert reviewers that may assist them in determining whether the care rendered constitutes a departure from the standard of care.

(b) If the board does not receive the information requested pursuant to paragraph (2) of subdivision (a) within 10 working days of requesting that information, the complaint may be reviewed by the medical experts and referred to a field office for investigation without the information.

(c) Nothing in this section shall impede the board's ability to seek and obtain an interim suspension order or other emergency relief.

(d) The enforcement monitor shall in its initial report address whether a complaint received by the board relating to a physician and surgeon who is the subject of a pending investigation, accusation, or on probation should be reviewed pursuant to this section or referred directly to field investigation.

SEC. 19. Section 2220.1 is added to the Business and Professions Code, to read:

2220.1. (a) (1) The director shall appoint a Medical Board of California Enforcement Program Monitor prior to March 31, 2003. The director may retain a person for this position by a personal services contract, the Legislature finding, pursuant to Section 19130 of the Government Code, that this is a new state function.

(2) The director shall supervise the enforcement program monitor and may terminate or dismiss him or her from this position.

(b) The director shall advertise the availability of this position. The requirements for this position include experience in conducting investigations and familiarity with state laws, rules, and procedures pertaining to the board and with relevant administrative procedures.

(c) (1) The enforcement program monitor shall monitor and evaluate the disciplinary system and procedures of the board, making as his or her highest priority the reform and reengineering of the board's enforcement program and operations and the improvement of the overall efficiency of the board's disciplinary system.

(2) This monitoring duty shall be performed on a continuing basis for a period not exceeding two years from the date of the enforcement program monitor's appointment and shall include, but not be limited to, improving the quality and consistency of complaint processing and investigation, reducing the timeframes for completing complaint processing and investigation, reducing any complaint backlog, assessing the relative value to the board of various sources of complaints or information available to the board about licensees in identifying licensees who practice substandard care causing serious patient harm, assuring consistency in the application of sanctions or discipline imposed on licensees, and shall include the following areas: the accurate and consistent implementation of the laws and rules affecting discipline,

appropriate application of investigation and prosecution priorities, particularly with respect to priority cases, as defined in Section 2220.05, board and Attorney General staff, defense bar, licensee, and patients' concerns regarding disciplinary matters or procedures, and the board's cooperation with other governmental entities charged with enforcing related laws and regulations regarding physicians and surgeons. The enforcement program monitor shall also evaluate the method used by investigators in the regional offices for selecting experts to review cases to determine if the experts are selected on an impartial basis and to recommend methods of improving the selection process. The enforcement program monitor shall also evaluate the effectiveness and efficiency of the board's diversion program and make recommendations regarding the continuation of the program and any changes or reforms required to assure that physicians and surgeons participating in the program are appropriately monitored and the public is protected from physicians and surgeons who are impaired due to alcohol or drug abuse or mental or physical illness.

(3) The enforcement program monitor shall exercise no authority over the board's discipline operations or staff; however, the board and its staff shall cooperate with him or her, and the board shall provide data, information, and case files as requested by the enforcement program monitor to perform all of his or her duties.

(4) The director shall assist the enforcement program monitor in the performance of his or her duties, and the enforcement program monitor shall have the same investigative authority as the director.

(d) The enforcement program monitor shall submit an initial written report of his or her findings and conclusions to the board, the department, and the Legislature no later than October 1, 2003, and every six months thereafter, and be available to make oral reports to each, if requested to do so. The initial report shall include an analysis of the sources of information that resulted in each disciplinary action imposed since January 1, 2003, involving priority cases, as defined in Section 2220.05. The enforcement program monitor may also provide additional information to either the department or the Legislature at his or her discretion or at the request of either the department or the Legislature. The enforcement program monitor shall make his or her reports available to the public or the media. The enforcement program monitor shall make every effort to provide the board with an opportunity to reply to any facts, findings, issues, or conclusions in his or her reports with which the board may disagree.

(e) The board shall reimburse the department for all of the costs associated with the employment of an enforcement program monitor.

(f) The enforcement program monitor shall issue a final report prior to March 31, 2005. The final report shall include final findings and

conclusions on the topics addressed in the reports submitted by the monitor pursuant to subdivision (d).

(g) This section shall become inoperative on March 31, 2005, and as of January 1, 2006, shall be repealed, unless a later enacted statute, which is enacted before January 1, 2006, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 20. Section 2227 of the Business and Professions Code is amended to read:

2227. (a) A licensee whose matter has been heard by an administrative law judge of the Medical Quality Hearing Panel as designated in Section 11371 of the Government Code, or whose default has been entered, and who is found guilty, or who has entered into a stipulation for disciplinary action with the division, may, in accordance with the provisions of this chapter:

(1) Have his or her license revoked upon order of the division.

(2) Have his or her right to practice suspended for a period not to exceed one year upon order of the division.

(3) Be placed on probation and be required to pay the costs of probation monitoring upon order of the division.

(4) Be publicly reprimanded by the division.

(5) Have any other action taken in relation to discipline as part of an order of probation, as the division or an administrative law judge may deem proper.

(b) Any matter heard pursuant to subdivision (a), except for warning letters, medical review or advisory conferences, professional competency examinations, continuing education activities, and cost reimbursement associated therewith that are agreed to with the division and successfully completed by the licensee, or other matters made confidential or privileged by existing law, is deemed public, and shall be made available to the public by the board pursuant to Section 803.1.

SEC. 21. Section 2234 of the Business and Professions Code is amended to read:

2234. The Division of Medical Quality shall take action against any licensee who is charged with unprofessional conduct. In addition to other provisions of this article, unprofessional conduct includes, but is not limited to, the following:

(a) Violating or attempting to violate, directly or indirectly, assisting in or abetting the violation of, or conspiring to violate any provision of this chapter.

(b) Gross negligence.

(c) Repeated negligent acts. To be repeated, there must be two or more negligent acts or omissions. An initial negligent act or omission followed by a separate and distinct departure from the applicable standard of care shall constitute repeated negligent acts.

(1) An initial negligent diagnosis followed by an act or omission medically appropriate for that negligent diagnosis of the patient shall constitute a single negligent act.

(2) When the standard of care requires a change in the diagnosis, act, or omission that constitutes the negligent act described in paragraph (1), including, but not limited to, a reevaluation of the diagnosis or a change in treatment, and the licensee's conduct departs from the applicable standard of care, each departure constitutes a separate and distinct breach of the standard of care.

(d) Incompetence.

(e) The commission of any act involving dishonesty or corruption which is substantially related to the qualifications, functions, or duties of a physician and surgeon.

(f) Any action or conduct which would have warranted the denial of a certificate.

(g) The practice of medicine from this state into another state or country without meeting the legal requirements of that state or country for the practice of medicine. Section 2314 shall not apply to this subdivision. This subdivision shall become operative upon the implementation of the proposed registration program described in Section 2052.5.

SEC. 22. Section 2246 is added to the Business and Professions Code, to read:

2246. Any proposed decision or decision issued under this article that contains any finding of fact that the licensee engaged in any act of sexual exploitation, as described in paragraphs (3) to (5), inclusive, of subdivision (b) of Section 729, with a patient shall contain an order of revocation. The revocation shall not be stayed by the administrative law judge.

SEC. 23. Section 2313 of the Business and Professions Code is amended to read:

2313. The Division of Medical Quality shall report annually to the Legislature, no later than October 1 of each year, the following information:

(a) The total number of temporary restraining orders or interim suspension orders sought by the board or the division to enjoin licensees pursuant to Sections 125.7, 125.8 and 2311, the circumstances in each case that prompted the board or division to seek that injunctive relief, and whether a restraining order or interim suspension order was actually issued.

(b) The total number and types of actions for unprofessional conduct taken by the board or a division against licensees, the number and types of actions taken against licensees for unprofessional conduct related to

prescribing drugs, narcotics, or other controlled substances, including those related to the undertreatment or undermedication of pain.

(c) Information relative to the performance of the division, including the following: number of consumer calls received; number of consumer calls or letters designated as discipline-related complaints; number of calls resulting in complaint forms being sent to complainants and number of forms returned; number of Section 805 reports by type; number of Section 801 and Section 803 reports; coroner reports received; number of convictions reported to the division; number of criminal filings reported to the division; number of complaints and referrals closed, referred out, or resolved without discipline, respectively, prior to accusation; number of accusations filed and final disposition of accusations through the division and court review, respectively; final physician discipline by category; number of citations issued with fines and without fines, and number of public reprimands issued; number of cases in process more than six months from receipt by the division of information concerning the relevant acts to the filing of an accusation; average and median time in processing complaints from original receipt of complaint by the division for all cases at each stage of discipline and court review, respectively; number of persons in diversion, and number successfully completing diversion programs and failing to do so, respectively; probation violation reports and probation revocation filings and dispositions; number of petitions for reinstatement and their dispositions; and caseloads of investigators for original cases and for probation cases, respectively.

''Action,'' for purposes of this section, includes proceedings brought by, or on behalf of, the division against licensees for unprofessional conduct which have not been finally adjudicated, as well as disciplinary actions taken against licensees.

(d) The total number of reports received pursuant to Section 805 by the type of peer review body reporting and, where applicable, the type of health care facility involved and the total number and type of administrative or disciplinary actions taken by the Medical Board of California with respect to the reports.

(e) The number of malpractice settlements in excess of thirty thousand dollars ($30,000) reported pursuant to Section 801. This information shall be grouped by specialty practice and shall include the total number of physicians and surgeons practicing in each specialty. For the purpose of this subdivision, ''specialty'' includes all specialties and subspecialties considered in determining the risk categories described in Section 803.1.

SEC. 24. Section 2350 of the Business and Professions Code is amended to read:

2350. (a) The division shall establish criteria for the acceptance, denial, or termination of physicians and surgeons in a diversion program. Only those physicians and surgeons who have voluntarily requested diversion treatment and supervision by a committee shall participate in a program.

(b) A physician and surgeon under current investigation by the division may request entry into the diversion program by contacting the Chief or Deputy Chief of Enforcement of the Medical Board of California. The Chief or Deputy Chief of Enforcement of the Medical Board of California shall refer the physician and surgeon who requests participation in the diversion program to a committee for evaluation of eligibility, even if the physician and surgeon is currently under investigation by the division, as long as the investigation is based primarily on mental illness or on the self-administration of drugs or alcohol under Section 2239, or the illegal possession, prescription, or nonviolent procurement of drugs for self-administration, and does not involve actual harm to the public or his or her patients. Prior to referring a physician and surgeon to the diversion program, the division may require any physician and surgeon who requests participation under those circumstances, or if there are other violations, to execute a statement of understanding in which the physician and surgeon agrees that violations of this chapter or other statutes that would otherwise be the basis for discipline may nevertheless be prosecuted should the physician and surgeon be terminated from the program for failure to comply with program requirements.

(c) Neither acceptance into nor participation in the diversion program shall preclude the division from investigating or continuing to investigate any physician and surgeon for any unprofessional conduct committed before, during, or after participation in the diversion program.

(d) Neither acceptance into nor participation in the diversion program shall preclude the division from taking disciplinary action or continuing to take disciplinary action against any physician and surgeon for any unprofessional conduct committed before, during, or after participation in the diversion program, except for conduct that resulted in the physician and surgeon's referral to the diversion program.

(e) Any physician and surgeon terminated from the diversion program for failure to comply with program requirements is subject to disciplinary action by the division for acts committed before, during, and after participation in the diversion program. The division shall not be precluded from taking disciplinary action for violations identified in the statement of understanding described in subdivision (b) if a physician and surgeon is terminated from the diversion program for failure to comply with program requirements. The termination of a physician and

surgeon who has been referred to the diversion program pursuant to subdivision (b) shall be reported by the program manager to the division.

(f) Nothing in this section shall preclude a physician and surgeon who is not the subject of a current investigation from self-referring to the diversion program on a confidential basis. Subdivision (b) shall not apply to a physician and surgeon who applies for the diversion program in accordance with this subdivision.

(g) Any physician and surgeon who successfully completes the diversion program shall not be subject to any disciplinary actions by the board for any alleged violation that resulted in referral to the diversion program.

(1) Successful completion shall be determined by the program manager and shall include, at a minimum, three years during which the physician and surgeon has remained free from the use of drugs or alcohol and adopted a lifestyle to maintain a state of sobriety.

(2) Notwithstanding paragraph (1), with respect to mental illness, successful completion shall be determined by the program manager and shall instead include, at a minimum, three years of mental health stability and treatment compliance and adoption of a lifestyle designed to maintain a state of mental health stability.

(h) The division shall establish criteria for the selection of evaluating physicians and surgeons or psychologists who shall examine physicians and surgeons requesting diversion under a program. Any reports made under this article by the evaluating physician and surgeon or psychologist shall constitute an exception to Section 2263 and to Sections 994, 995, 1014, and 1015 of the Evidence Code.

(i) The division shall require biannual reports from each committee which shall include, but not be limited to, information concerning the number of cases accepted, denied, or terminated with compliance or noncompliance, and a cost analysis of the program. The Bureau of Medical Statistics may assist the committees in the preparation of the reports.

(j) Each physician and surgeon shall sign an agreement that diversion records may be used in disciplinary or criminal proceedings if the physician and surgeon is terminated from the diversion program and one of the following conditions exists:

(1) His or her participation in the diversion program is a condition of probation.

(2) He or she has a disciplinary action pending or was under investigation at the time of entering the diversion program.

(3) A diversion evaluation committee determines that he or she presents a threat to the public health or safety.

This agreement shall also authorize the diversion program to exchange information about the physician and surgeon's recovery with

a hospital well-being committee or monitor and with the board's licensing program, if appropriate, and to acknowledge, with the physician and surgeon's approval, that he or she is participating in the diversion program. Nothing in this section shall be construed to allow release of alcohol or drug treatment records in violation of federal or state law.

In addition, this agreement shall authorize the diversion program, upon recommendation by a diversion evaluation committee, to order the physician and surgeon to be examined by one or more physicians and surgeons designated by the diversion program to determine clinical competency. The failure of the physician and surgeon to comply with this order shall constitute grounds for suspension or revocation of his or her certificate. The board shall develop regulations that provide guidelines for determining when this examination should be ordered.

SEC. 25. Section 2435 of the Business and Professions Code is amended to read:

2435. The following fees apply to the licensure of physicians and surgeons:

(a) Each applicant for a certificate based upon a national board diplomate certificate, each applicant for a certificate based on reciprocity, and each applicant for a certificate based upon written examination, shall pay a nonrefundable application and processing fee, as set forth in subdivision (b), at the time the application is filed.

(b) The application and processing fee shall be fixed by the Division of Licensing by May 1 of each year, to become effective on July 1 of that year. The fee shall be fixed at an amount necessary to recover the actual costs of the licensing program as projected for the fiscal year commencing on the date the fees become effective.

(c) Each applicant for a certificate by written examination, unless otherwise provided by this chapter, shall pay an examination fee fixed by the board, which shall equal the actual cost to the board of the purchase of the written examination furnished by the organization pursuant to Section 2176, plus the actual cost to the board of administering the written examination. The actual cost to the board of administering the written examination that shall be charged to the applicant shall not exceed one hundred dollars ($100). The board may charge the examination fee provided for in this section for any subsequent reexamination of the applicant.

(d) The board shall charge each applicant who is required to take the oral examination as a condition of licensure an oral examination fee that is equal to the amount necessary to recover the actual cost of that examination. The board shall charge the oral examination fee provided for in this subdivision for any subsequent oral examination taken by the applicant.

(e) Each applicant who qualifies for a certificate, as a condition precedent to its issuance, in addition to other fees required herein, shall pay an initial license fee, if any. The initial license fee shall be fixed by the board at an amount not to exceed six hundred ten dollars ($610), in accordance with paragraph (2) of subdivision (f). Any applicant enrolled in an approved postgraduate training program shall be required to pay only 50 percent of the initial license fee.

(f) (1) The biennial renewal fee shall be fixed by the board at an amount not to exceed six hundred ten dollars ($610), in accordance with paragraph (2).

(2) The board shall fix the biennial renewal fee and the initial license fee so that, together with the amounts from other revenues, the reserve balance in the board's contingent fund shall be equal to approximately two months of annual authorized expenditures. Any change in the renewal and initial license fees shall be effective upon a determination by the board, by emergency regulations adopted pursuant to Section 2436, that changes in the amounts are necessary to maintain a reserve balance in the board's contingent fund equal to two months of annual authorized expenditures in the state fiscal year in which the expenditures are to occur.

(g) Notwithstanding Section 163.5, the delinquency fee shall be 10 percent of the biennial renewal fee.

(h) The duplicate certificate and endorsement fees shall each be fifty dollars ($50), and the certification and letter of good standing fees shall each be ten dollars ($10).

(i) 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 Contingent Fund of the Medical Board of California equal to approximately two months' operating expenditures.

(j) The board shall report to the appropriate policy and fiscal committees of each house of the Legislature whenever the board proposes or approves a fee increase pursuant to this section. The board shall specify the reasons for each increase and identify the percentage of funds to be derived from an increase in the fees that will be used for investigation or enforcement related activities by the board.

SEC. 26. Section 2507 of the Business and Professions Code is amended to read:

2507. (a) The license to practice midwifery authorizes the holder, under the supervision of a licensed physician and surgeon, to attend cases of normal childbirth and to provide prenatal, intrapartum, and postpartum care, including family-planning care, for the mother, and immediate care for the newborn.

(b) As used in this article, the practice of midwifery constitutes the furthering or undertaking by any licensed midwife, under the

supervision of a licensed physician and surgeon who has current practice or training in obstetrics, to assist a woman in childbirth so long as progress meets criteria accepted as normal. All complications shall be referred to a physician and surgeon immediately. The practice of midwifery does not include the assisting of childbirth by any artificial, forcible, or mechanical means, nor the performance of any version.

(c) As used in this article, ''supervision'' shall not be construed to require the physical presence of the supervising physician and surgeon.

(d) The ratio of licensed midwives to supervising physicians and surgeons shall not be greater than four individual licensed midwives to one individual supervising physician and surgeon.

(e) A midwife is not authorized to practice medicine and surgery by this article.

(f) The board shall, not later than July 1, 2003, adopt 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), regulations defining the appropriate standard of care and level of supervision required for the practice of midwifery.

SEC. 27. Section 3504 of the Business and Professions Code is amended to read:

3504. There is established a Physician Assistant Committee of the Medical Board of California. The committee consists of nine members.

This section shall become inoperative on July 1, 2007, and, as of January 1, 2008, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 2008, deletes or extends the dates on which it becomes inoperative and is repealed. The repeal of this section renders the committee subject to the review required by Division 1.2 (commencing with Section 473).

SEC. 28. Section 3516 of the Business and Professions Code is amended to read:

3516. Notwithstanding any other provision of law, any physician assistant licensed by the committee shall be eligible for employment or supervision by any physician approved by the board to supervise physician assistants, except that:

(a) No physician shall supervise more than two physician assistants at any one time, except as provided in Sections 3502.5, 3516.1, and 3516.5.

(b) The board may restrict physicians to supervising specific types of physician assistants including, but not limited to, restricting physicians from supervising physician assistants outside of the physician's field of specialty.

SEC. 29. Section 3516.1 is added to the Business and Professions Code, to read:

3516.1. (a) (1) Notwithstanding any other provision of law, a physician who provides services in a medically underserved area may supervise not more than four physician assistants at any one time.

(2) As used in this section, ''medically underserved area'' means a ''health professional(s) shortage area'' (HPSA) as defined in Part 5 (commencing with Section 5.1) of Chapter 1 of Title 42 of the Code of Federal Regulations or an area of the state where unmet priority needs for physicians exist as determined by the California Health Manpower Policy Commission pursuant to Section 128225 of the Health and Safety Code.

(b) This section shall become inoperative on July 1, 2007, and, as of January 1, 2008, is repealed, unless a later enacted statute that is enacted before January 1, 2008, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 30. Section 3519.5 is added to the Business and Professions Code, to read:

3519.5. (a) The committee may issue under the name of the board a probationary license to an applicant subject to terms and conditions, including, but not limited to, any of the following conditions of probation:

(1) Practice limited to a supervised, structured environment where the applicant's activities shall be supervised by another physician assistant.

(2) Total or partial restrictions on issuing a drug order for controlled substances.

(3) Continuing medical or psychiatric treatment.

(4) Ongoing participation in a specified rehabilitation program.

(5) Enrollment and successful completion of a clinical training program.

(6) Abstention from the use of alcohol or drugs.

(7) Restrictions against engaging in certain types of medical services.

(8) Compliance with all provisions of this chapter.

(b) The committee and the board may modify or terminate the terms and conditions imposed on the probationary license upon receipt of a petition from the licensee.

(c) Enforcement and monitoring of the probationary conditions shall be under the jurisdiction of the committee and the board. These proceedings shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

SEC. 31. Section 11371 of the Government Code is amended to read:

11371. (a) There is within the Office of Administrative Hearings a Medical Quality Hearing Panel, consisting of no fewer than five

full-time administrative law judges. The administrative law judges shall have medical training as recommended by the Division of Medical Quality of the Medical Board of California and approved by the Director of the Office of Administrative Hearings.

(b) The director shall determine the qualifications of panel members, supervise their training, and coordinate the publication of a reporter of decisions pursuant to this section. The panel shall include only those persons specifically qualified and shall at no time constitute more than 25 percent of the total number of administrative law judges within the Office of Administrative Hearings. If the members of the panel do not have a full workload, they may be assigned work by the Director of the Office of Administrative Hearings. When the medically related case workload exceeds the capacity of the members of the panel, additional judges shall be requested to be added to the panels as appropriate. When this workload overflow occurs on a temporary basis, the Director of the Office of Administrative Hearings shall supply judges from the Office of Administrative Hearings to adjudicate the cases.

(c) The decisions of the administrative law judges of the panel, together with any court decisions reviewing those decisions, shall be published in a quarterly ''Medical Discipline Report,'' to be funded upon appropriation by the Legislature from the Contingent Fund of the Medical Board of California.

(d) The administrative law judges of the panel shall have panels of experts available. The panels of experts shall be appointed by the Director of the Office of Administrative Hearings, with the advice of the Medical Board of California. These panels of experts may be called as witnesses by the administrative law judges of the panel to testify on the record about any matter relevant to a proceeding and subject to cross-examination by all parties, and Section 11430.30 does not apply in a proceeding under this section. The administrative law judge may award reasonable expert witness fees to any person or persons serving on a panel of experts, which shall be paid from the Contingent Fund of the Medical Board of California upon appropriation by the Legislature.

SEC. 32. 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 1086

An act to add and repeal Chapter 3.8 (commencing with Section 50199.70) of Part 1 of Division 31 of the Health and Safety Code, relating to community renewal, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 29, 2002. Filed with Secretary of State September 29, 2002.]

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

SECTION 1. Chapter 3.8 (commencing with Section 50199.70) is added to Part 1 of Division 31 of the Health and Safety Code, to read:

CHAPTER 3.8. COMMUNITY RENEWAL

50199.70. The Legislature hereby finds and declares all of the following:

(a) The federal Community Renewal Tax Relief Act of 2000 (Public Law 106-554), amending the Internal Revenue Code of 1986, establishes a system of distributing commercial revitalization tax deductions and a commercial revitalization expenditure ceiling to stimulate the development of designated renewal communities.

(b) The first designated renewal communities include specified areas in San Francisco, San Diego, and Los Angeles as urban renewal communities, and Parlier and Orange Cove as rural renewal communities, through partnerships between those communities and the state.

(c) The federal law allows for a maximum commercial revitalization expenditure ceiling of twelve million dollars ($12,000,000) for each renewal community designated in the state. The ceiling amount is available for allocation during each calendar year after 2001 and before 2010 for each renewal community in the state.

(d) To allocate the commercial revitalization expenditures available to it, the state must comply with certain requirements specified in Section 1400E and following of Title 26 of the United States Code, including designating a commercial revitalization agency for the state and developing a qualified allocation plan. This plan is to be formulated by the state's commercial revitalization agency.

(e) The renewal community program offers the state an opportunity to provide federally funded financial and economic benefits to certain communities that have a demonstrated need for that assistance. It is in the interest of the people of this state that action be taken as necessary to obtain those benefits.

50199.71. (a) This chapter is enacted to comply with the requirements of Section 1400E and following of Title 26 of the United States Code, as it may be amended from time to time.

(b) To the extent that any provision of this chapter is held to be inconsistent with, or repugnant to, federal law, the provision shall be given effect in accordance with its terms to the greatest extent possible and consistent with the federal law and any inconsistency shall have no effect on the remaining provisions of this chapter.

50199.72. (a) ''Act'' means the federal Community Renewal Tax Relief Act of 2000, as it may be amended (26 U.S.C. Sec. 1400E and following).

(b) ''Applicant'' means a private entity that has a partnership with a designated renewal community and that submits an application, in the form developed by the committee, as defined in subdivision (c), for the purpose of allocating the state's available commercial revitalization expenditure ceiling.

(c) ''Committee'' means the California Tax Credit Allocation Committee, as defined in Sections 50199.7 and 50199.8.

(d) ''Designated renewal community'' means a community designated as a renewal community by the Secretary of the United States Housing and Urban Development Agency pursuant to Section 1400E of Title 26 of the United States Code.

50199.73. (a) The committee shall develop a qualified allocation plan that complies with Section 1400I(e)(2) of Title 26 of the United States Code, and includes, but is not limited to, the following:

(1) Selection criteria to be used to determine priorities of the committee that are appropriate to local conditions and that consider all of the following:

(A) The degree to which a project contributes to the implementation of a strategic plan devised for a renewal community.

(B) The amount of any increase in permanent, full-time employment.

(C) The active involvement of residents and nonprofit groups within the renewal community.

(2) A procedure that the committee will follow to monitor compliance with the act.

(b) Prior to implementation of the initial qualified allocation plan, the committee shall provide for a public hearing and reasonable period for public comment. Following the public comment period, the final qualified allocation plan shall be approved by the committee.

(c) The qualified allocation plan shall be reviewed by the committee on an annual basis. If any changes are proposed, the committee shall allow for a reasonable period of public comment to review the proposed changes. Any final modifications to the qualified allocation plan shall be approved by the committee.

50199.74. (a) The committee is hereby designated as the state's only commercial revitalization agency for purposes of Section 1400I of Title 26 of the United States Code. The committee shall annually allocate the aggregate commercial revitalization expenditure amount available to the state in accordance with this chapter and applicable federal law. The committee shall undertake any and all responsibilities of commercial revitalization agencies set forth in Section 1400I of Title 26 of the United States Code.

(b) For the purpose of allocating the state's aggregate commercial revitalization expenditure amount, the committee shall do all of the following:

(1) Determine and disseminate the requirements for an application for allocation of the commercial revitalization expenditures.

(2) Devise and implement the review procedure to determine the priority of each project as well as the amount of qualifying expenditures attributable to each application.

(3) Allocate the available commercial revitalization expenditures for each calendar year among the applicants.

(c) The committee shall not be required to allocate twelve million dollars ($12,000,000) to each renewal community.

(d) The committee shall develop and provide application forms for use by applicants. The committee shall adopt uniform procedures for submission and review of applications, including fees it shall charge to defray the committee's cost in administering this chapter. In the committee's discretion, the fees may be charged to an applicant as a condition of submitting an application or as a condition of receiving an allocation or reservation of the state's current or anticipated commercial revitalization ceiling, or both.

(e) No allocations or reservations shall be made pursuant to this subdivision with respect to projects that do not meet the requirements of the qualified allocation plan, this chapter, or Section 1400I of Title 26 of the United States Code.

50199.75. (a) The committee shall establish and collect fees payable by the commercial revitalization expenditure applicant or recipient to the committee to cover all of the costs of the committee in carrying out its responsibility under this chapter.

(b) The Community Revitalization Fee Fund is hereby created in the State Treasury. The fees collected pursuant to this chapter shall be deposited by the committee in the Community Revitalization Fee Fund and, upon appropriation by the Legislature, moneys in the fund shall be available to the committee for the purpose of covering all of those costs, except that fees may be shared, in an amount determined by the committee, with any state or local agency that assists the committee in performing its duties.

(c) Until the time that sufficient fee revenue is received by the committee, the committee may borrow any money as may be required for the purpose of meeting necessary expenses of the operation of the committee, not to exceed the amount appropriated. Any loan made to the committee pursuant to this subdivision shall be repayable solely from moneys appropriated to the committee from the Community Revitalization Fee Account and shall not constitute a general obligation for which the faith and credit of the state are pledged.

50199.76. Any allocation or reservation of a portion of the current or future commercial revitalization expenditure ceiling by the committee may be upon terms and conditions that the committee may determine. For example, the committee may condition an allocation or reservation on the execution of a contract between the commercial revitalization expenditure recipient and the committee or state or local agency requiring the recipient to comply with all the terms of Section 1400E and following of the Internal Revenue Code, any applicable state law, and any additional requirements that the committee deems necessary or appropriate, and providing for legal action to obtain specific performance or monetary damages for breach of contract.

50199.77. The committee shall adopt and supply forms for eliciting information for the purposes of this chapter from applicants. State and local agencies, applicants, and recipients shall provide the committee with any information requested by the committee in performing its duties and responsibilities pursuant to this chapter and the act.

50199.78. No allocation or reservation made by the committee may be transferred by the recipient unless the specific, written approval of the committee is obtained prior to the proposed transfer. Any such transfer shall be made in writing and shall be subject to the terms and conditions set forth by the committee.

50199.79. The committee shall coordinate efforts with the federal Department of Housing and Urban Development and the renewal communities, including reporting on progress measurements and facilitating outreach to local business and housing developers.

50199.80. (a) The committee may adopt, amend, or repeal rules and regulations for allocation of commercial revitalization expenditures pursuant to this chapter without complying with the procedural requirements of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, except as described in subdivision (b).

(b) The committee shall provide a notice of proposed action as described in Section 11346.5 of the Government Code. The notice of proposed action shall be provided to the public at least 21 days before the close of the public comment period, and the committee shall schedule at least one public hearing as described in Section 11346.8 of

the Government Code before the close of the public comment period. The committee shall maintain a rulemaking file as described in Section 11347.3 of the Government Code. The final version of the regulations shall be accompanied by a final statement of reasons as described in subdivision (a) of Section 11346.9 of the Government Code.

(c) These rules and regulations shall be effective immediately upon adoption by the committee.

(d) The committee may also adopt, amend, or repeal emergency rules and regulations pursuant to this chapter. The adoption, amendment, or repeal of these regulations shall be conclusively presumed to be necessary for the immediate preservation of the public peace, health, safety, or general welfare within the meaning or purposes of Section 11346.1 of the Government Code.

50199.81. This chapter shall remain in effect only until January 1, 2010, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 2010, deletes or extends that date. However, repeal of this chapter shall not invalidate or in any way affect the duration of any previously allocated or reserved commercial revitalization expenditures.

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 secure federal funding that will expire without the enactment of this chapter, it is necessary that this act take effect immediately.

CHAPTER 1087

An act to amend Sections 44325, 44326, 44328, and 44830.3 of, and to add Section 44329 to, the Education Code, relating to credentialing.

[Approved by Governor September 29, 2002. Filed with Secretary of State September 29, 2002.]

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

SECTION 1. Section 44325 of the Education Code is amended to read:

44325. (a) The Commission on Teacher Credentialing shall issue district intern certificates authorizing persons employed by any school district that maintains kindergarten and grades 1 to 12, inclusive, or that maintains classes in bilingual education to provide classroom

instruction to pupils in those grades and classes in accordance with the requirements of Section 44830.3. The commission, until January 1, 2008, also shall issue district intern certificates authorizing persons employed by any school district to provide classroom instruction to pupils with mild and moderate disabilities in special education classes, in accordance with the requirements of Section 44830.3.

(b) Each district intern certificate shall be valid for a period of two years. However, a certificate may be valid for three years if the intern is participating in a program that leads to the attainment of a specialist credential to teach pupils with mild and moderate disabilities, or four years if the intern is participating in a program that leads to the attainment of both a multiple subject or single subject teaching credential and a specialist credential to teach pupils with mild and moderate disabilities. Upon the recommendation of the school district, the commission may grant a one-year extension of the district intern certificate.

(c) The commission shall require each applicant for a district intern certificate to demonstrate that he or she meets the minimum qualifications for that certificate, including (1) the possession of a baccalaureate degree conferred by a regionally accredited institution of postsecondary education, (2) the successful passage of the state basic skills proficiency test administered under Sections 44252 and 44252.5, (3) the successful completion of the appropriate subject matter examination administered by the commission, or a commission-approved subject matter preparation program for the subject areas in which the district intern is authorized to teach, and (4) the oral language component of the assessment program leading to the bilingual-crosscultural language and academic development certificate for persons seeking a district intern certificate to teach bilingual education classes.

(d) The commission shall apply the requirements of Sections 44339, 44340, and 44341 to each applicant for a district intern certificate.

SEC. 2. Section 44326 of the Education Code is amended to read:

44326. (a) Persons holding district intern certificates issued by the commission under Section 44325 to teach in grades 9 to 12, inclusive, or in grades 6 to 8, inclusive, in a departmentalized program, or in departmentalized bilingual classes, shall only be authorized to teach in the subject areas in which they have completed an undergraduate academic major or minor.

(b) Persons holding district intern certificates issued by the commission under Section 44325 to teach in kindergarten and grades 1 to 8, inclusive, in a self-contained program or in self-contained bilingual classes who have completed an academic major or minor or a diversified or liberal arts degree that includes the subject matter coursework

prescribed in Section 44314 shall be authorized to teach in those grades or classes.

(c) Prior to assignment to teach pupils with mild and moderate disabilities, persons holding district intern certificates issued by the commission under Section 44325 to teach those pupils shall meet the requirements of either subdivision (a) or (b).

(d) Each district intern shall be required to teach with the assistance and guidance of certificated employees of the district who have been classified as mentor teachers under Article 4 (commencing with Section 44490) of Chapter 3, or with the assistance and guidance of certificated employees selected through a competitive process adopted by the governing board after consultation with the exclusive teacher representative unit or by personnel employed by institutions of higher education to supervise student teachers. Mentor teachers or other certificated employees shall possess valid certification at the same level or of the same type of credential as the district interns they serve.

SEC. 3. Section 44328 of the Education Code is amended to read:

44328. Unless the commission determines that substantial evidence exists that a person is unqualified to teach, upon the completion of successful service as a district intern pursuant to subdivision (b) of Section 44325, and upon the recommendation of the school district governing board, the commission shall award professional credentials to district interns in the same manner as applicants recommended for credentials by institutions that operate approved programs of professional preparation.

Notwithstanding paragraphs (1) and (2) of subdivision (a) of Section 44225, paragraphs (3), (4), (5), and (6) of subdivision (b) of Section 44259, paragraphs (1), (2), (3), and (4) of subdivision (c) of Section 44259, and Sections 44261, 44265, and 44335, it is the intent of the Legislature that upon recommendation by the governing board, district interns shall be issued professional credentials, rather than preliminary credentials, upon the completion of successful service as a teacher pursuant to subdivision (b) of Section 44325 unless the governing board recommends, and the commission finds substantial evidence that the person is not qualified to teach. Notwithstanding Section 44261, the professional credential awarded to any district intern holding a certificate to teach bilingual classes shall be a basic teaching credential with a bilingual-crosscultural language and academic development emphasis. Notwithstanding Section 44265, the professional credential awarded to any district intern who holds a certificate to teach special education pupils with mild and moderate disabilities shall be a special education specialist instruction credential that authorizes the holder to teach special education pupils with mild and moderate disabilities.

It is the intent of the Legislature that institutions of higher education that operate approved programs of professional preparation work cooperatively with school districts that offer district intern programs for a special education specialist credential to apply the regular education coursework and fieldwork from the special education district intern program toward earning a multiple or single subject teaching credential through the institution.

SEC. 4. Section 44329 is added to the Education Code, to read:

44329. On or before January 1, 2007, the commission shall prepare and submit a report to the Legislature that summarizes the regulations adopted by the commission to expand statewide the issuance of district intern certificates that authorize classroom instruction to pupils with mild and moderate disabilities. The report shall also analyze the effectiveness of persons who hold those certificates.

SEC. 5. Section 44830.3 of the Education Code is amended to read:

44830.3. (a) The governing board of any school district that maintains kindergarten or grades 1 to 12, inclusive, or that maintains classes in bilingual education or special education programs for pupils with mild and moderate disabilities, may in consultation with an accredited institution of higher education offering an approved program of pedagogical teacher preparation employ persons authorized by the Commission on Teacher Credentialing to provide service as district interns to provide instruction to pupils in those grades or classes as a classroom teacher. The governing board shall require that each district intern be assisted and guided by a certificated employee of the school district who has been designated by the governing board as a mentor teacher pursuant to Article 4 (commencing with Section 44490) of Chapter 3 or by certificated employees selected through a competitive process adopted by the governing board after consultation with the exclusive teacher representative unit or by personnel employed by institutions of higher education to supervise student teachers. Mentor teachers or other certificated employees shall possess valid certification at the same level, or of the same type, of credential as the district interns they serve.

(b) The governing board of each school district employing district interns shall develop and implement a professional development plan for district interns in consultation with an accredited institution of higher education offering an approved program of pedagogical preparation. The professional development plan shall include all of the following:

(1) Provisions for an annual evaluation of the district intern.

(2) As the governing board determines necessary, a description of courses to be completed by the district intern, if any, and a plan for the completion of preservice or other clinical training, if any, including student teaching.

(3) Mandatory preservice training for district interns tailored to the grade level or class to be taught, through either of the following options:

(A) One hundred twenty clock hours of preservice training and orientation in the aspects of child development, classroom organization and management, pedagogy, and methods of teaching the subject field or fields in which the district intern will be assigned, which training and orientation period shall be under the direct supervision of an experienced permanent teacher. In addition, persons holding district intern certificates issued by the commission pursuant to Section 44325 shall receive orientation in methods of teaching pupils with mild and moderate disabilities. At the conclusion of the preservice training period, the permanent teacher shall provide the district with information regarding the area that should be emphasized in the future training of the district intern.

(B) The successful completion, prior to service by the intern in any classroom, of six semester units of coursework from a regionally accredited college or university, designed in cooperation with the school district to provide instruction and orientation in the aspects of child development and the methods of teaching the subject field or fields in which the district intern will be assigned.

(4) Instruction in child development and the methods of teaching during the first semester of service for district interns teaching in kindergarten or grades 1 to 6, inclusive, including bilingual classes and, for person holding district intern certificates issued by the commission pursuant to Section 44325, special education programs for pupils with mild and moderate disabilities at those levels.

(5) Instruction in the culture and methods of teaching bilingual children during the first year of service for district interns teaching children in bilingual classes and, for persons holding district intern certificates issued by the commission pursuant to Section 44325, instruction in the etiology and methods of teaching children with mild and moderate disabilities.

(6) Any other criteria that may be required by the governing board.

(7) In addition to the requirements set forth in paragraphs (1) to (6), inclusive, the professional development plan for district interns teaching in special education programs for pupils with mild and moderate disabilities also shall include 120 clock hours of mandatory training and supervised fieldwork that shall include, but not be limited to, instructional practices, and the procedures and pedagogy of both general education programs and special education programs that teach pupils with disabilities.

(8) In addition to the requirements set forth in paragraphs (1) to (6), inclusive, the professional development plan for district interns teaching bilingual classes shall also include 120 clock hours of mandatory

training and orientation, which shall include, but not be limited to, instruction in subject matter relating to bilingual-crosscultural language and academic development.

(9) The professional development plan for district interns teaching in special education programs for pupils with mild and moderate disabilities shall be based on the standards adopted by the commission as provided in subdivision (a) of Section 44327.

(c) Each district intern and each district teacher assigned to supervise the district intern during the preservice period, shall be compensated for the preservice period pursuant to subparagraph (A) or (B) of paragraph (3). The compensation shall be that which is normally provided by each district for staff development or in-service activity.

(d) Upon completion of two years of service, or three years of service for interns participating in a program that leads to the attainment of a specialist credential to teach pupils with mild and moderate disabilities, or four years if the intern is participating in a program that leads to the attainment of both a multiple subject or single subject teaching credential and a specialist credential to teach pupils with mild and moderate disabilities, the governing board may recommend to the Commission on Teacher Credentialing that the district intern be credentialed in the manner prescribed by Section 44328.

CHAPTER 1088

An act to add Sections 12803.6, 12803.65, and 12803.7 to the Government Code, to add Division 10 (commencing with Section 18000) to the Unemployment Insurance Code, and to amend Sections 12300 and 14132.95 of, and to add Sections 14007.95 and 14132.955 to, the Welfare and Institutions Code, relating to disabilities.

[Approved by Governor September 29, 2002. Filed with Secretary of State September 29, 2002.]

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

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

(a) Historically, federal programs for adults with disabilities have encouraged dependency on income supports and have created barriers to employment and economic self-sufficiency. Even in strong economic times, adults with disabilities have had limited options and faced major barriers to achieve economic self-sufficiency, resulting in prolonged reliance upon public assistance programs and an unacceptably high unemployment rates statewide.

(b) Federal laws enacted during the 1990's offered significant public policies and fiscal incentives designed to assist states to restructure workforce development programs into integrated workforce investment systems that will respond to the employment, training, and education needs of its citizens.

(c) Since 1998, employment-focused reforms for adults with disabilities in the workforce have been enacted into Medicare, medicaid, the Supplemental Security Income Program (SSI), the Social Security Disability Insurance Program (SSDI), and with respect to programs administered by the United States Department of Labor, and the United States Department of Education.

(d) The federal Workforce Investment Act of 1998 (WIA), (Public Law 105-220) redesigned major federal public employment programs, and included a requirement that services for employers and employees be centered in accessible, community-based one-stop centers.

(e) The federal Ticket to Work and Work Incentives Improvement Act of 1999, (Public Law 106-170) increased opportunities for states to remove and minimize barriers to employment for people with disabilities by improving access to health care coverage available under Medicare and medicaid.

(f) Beginning February 1, 2002, the Social Security Ticket to Work program (TTW) began a state-by-state phase in period nationally, allowing SSI and SSDI beneficiaries to receive a ''ticket'' from the Social Security Administration that can be assigned for employment services to a wider pool of rehabilitation, employment, or other employment support service providers. The Ticket to Work program (TTW) is scheduled for implementation in California in July 2003.

(g) The programs and consumer options provided under Public Law 106-170 are based upon public policies that respect the rights of consumers to control decisions related to health care, rehabilitation, and employment within the framework of independent living principles and guidelines that include, but are not limited to, providing consumers of these services with an array of choices to promote independence and financial stability.

(h) California took a significant step forward in removing barriers to work for Californians with disabilities when it enacted Chapter 820 of the Statutes of 1999 (Assembly Bill 155, introduced by Assembly Member Migden, which has been referred to as the ''250% California Working Disabled Program'' or ''CWD'') under which any employed individual who is disabled and whose countable income, as determined pursuant to Section 14007.9 of the Welfare and Institutions Code, does not exceed 250 percent of the federal poverty level shall be eligible for Medi-Cal benefits, subject to the payment of sliding-scale premiums set by the State Department of Health Services. Two years after its

implementation, CWD program enrollment is just above 500, which is significantly below budgeted projections.

(i) California received a "Medicaid Infrastructure Grant" (MIG) that is expected to continue for a second year, and that allows the State Department of Health Services to administer the California Health Incentive Improvement Project with the assistance of a project steering committee in order to bolster the state's efforts to conduct outreach, research, and analysis related to the implementation of Chapter 820 of the Statutes of 1999.

(j) California will have the opportunity to coordinate its activities with privately funded initiatives to identify potential cost savings that could be achieved if California adopted additional policies available to the state through the federal Balanced Budget Act of 1997 and the Ticket to Work and Work Incentives Improvement Act, including, but not limited to, raising the income standard, changing rules related to disregarding or exempting resources, providing adjustments to the amount of premiums paid on a sliding scale, including adjustments based on the amount paid for other health insurance, and providing an allowance for coverage for up to 18 months in the case of loss of employment.

(k) The California Governor's Committee on Employment of Disabled Persons, through its staff and volunteers, promotes in the private and public sectors understanding and information on employment supports and benefits for people with disabilities who transition from benefits as the sole source of income to gainful employment.

SEC. 2. Section 12803.6 is added to the Government Code, to read:

12803.6. (a) The Governor shall authorize the secretary of the Labor and Workforce Development Agency, in collaboration with the secretary of the California Health and Human Services Agency, to make available the expertise of state employees and programs to support the employment-related needs of individuals with disabilities. Using existing resources, the agencies shall develop a sustainable, comprehensive strategy to do all of the following:

(1) Bring adults with disabilities into gainful employment at a rate that is as close as possible to that of the general adult population.

(2) Support the goals of equality of opportunity, full participation, independent living, and economic self-sufficiency for these individuals.

(3) Ensure that state government is a model employer of individuals with disabilities.

(4) Support state coordination with, and participation in, benefits planning training and information dissemination projects supported by private foundations and federal grants.

(b) (1) The Labor and Workforce Development Agency shall monitor and enforce implementation of Section 188 of the federal Workforce Investment Act of 1998 (29 U.S.C. Sec. 2938), and shall require local workforce investment boards to report as follows:

(A) By July 1, 2003, each local workforce investment board shall report to the Labor and Workforce Development Agency or its designated department on the steps it has taken to ensure compliance with Section 188 of the federal Workforce Investment Act of 1998 (29 U.S.C. Sec. 2938), in regard to the provisions as they apply to persons with disabilities.

(B) By October 31, 2003, each local workforce investment board that chooses to participate in the federal Ticket to Work and Self-Sufficiency program shall report to the California Workforce Investment Board on its readiness to meet the eligibility standards to serve as an employment network under the federal Ticket to Work and Self-Sufficiency program (Section 1148(f), Part A, Title XI of the Social Security Act, 42 U.S.C. Section 1320b-19).

(2) The Labor and Workforce Development Agency shall report its findings, based on the reports described in subparagraph (A) of paragraph (1), to the Governor and the Legislature.

SEC. 3. Section 12803.65 is added to the Government Code, to read:

12803.65. (a) The Governor shall rename and establish, in the Labor and Workforce Development Agency, the existing California Governor's Committee on Employment of Disabled Persons as the ''California Governor's Committee on Employment of People with Disabilities'' or ''CGCEPD.''

(b) (1) The California Governor's Committee on Employment of People with Disabilities shall include, but not be limited to, the following:

(A) Four individuals with disabilities representing disabled persons, two appointed by the Governor and one each appointed by the Senate Committee on Rules and the Speaker of the Assembly, each for a three-year term.

(B) The Directors of the Employment Development Department, State Department of Health Services, State Department of Mental Health, State Department of Developmental Services, State Department of Social Services, and Department of Rehabilitation, and the Chair of the State Independent Living Council.

(C) Representatives from the State Department of Health Services' California Health Incentive Improvement Project.

(D) A representative from the California Workforce Investment Board.

(E) Representatives from any other department or program that may have a role in increasing the capacity of state programs to support the employment-related needs of individuals with disabilities.

(F) A representative from a local one-stop or local workforce investment board, to be appointed by the Governor.

(G) A business representative with experience in employing persons with disabilities, to be appointed by the Governor.

(2) The members of the California Governor's Committee on Employment of People with Disabilities shall select a chair from among the members, and shall hold open meetings no less than quarterly.

(c) The California Governor's Committee on Employment of People with Disabilities shall consult with and advise the Labor and Workforce Development Agency and the California Health and Human Services Agency on all issues related to full inclusion in the workforce of persons with disabilities, including development of the comprehensive strategy required pursuant to Section 12803.6 and implementation of the grant program established pursuant to Section 12803.7.

(d) The California Governor's Committee on Employment of People with Disabilities shall also:

(1) Coordinate and provide leadership, as necessary, with regard to efforts to increase inclusion in the workforce of persons with disabilities.

(2) Report annually to the Legislature and the Governor on the employment status of Californians with disabilities.

(e) The California Governor's Committee on Employment of People with Disabilities shall provide support to the State Workforce Investment Board and the local one-stop centers in their efforts to achieve full compliance with Sections 18002, 18004, 18006, and 18008 of the Unemployment Insurance Code, and shall identify the extent to which any one-stops are not in full compliance with those sections and the reasons for the lack of compliance, including the need for additional resources.

(f) The California Governor's Committee on Employment of People with Disabilities shall meet quarterly with the California Health Incentive Improvement Project, administered by the State Department of Health Services, and the project's steering committee, to the extent funding for the project continues and the activities of the California Governor's Committee on Employment of People with Disabilities are not inconsistent with the charge of the California Health Incentive Improvement Project.

(g) Using existing funding, the California Governor's Committee on Employment of People with Disabilities shall facilitate, promote, and coordinate collaborative dissemination of information on employment supports and benefits, which shall include the Ticket to Work program

and health benefits, to individuals with disabilities, consumers of public services, employers, service providers, and state and local agency staff.

(h) Using existing funding, the California Governor's Committee on Employment of People with Disabilities shall receive primary administrative and staff support from the State Employment Development Department.

SEC. 4. Section 12803.7 is added to the Government Code, to read:

12803.7. The California Governor's Committee on Employment of People with Disabilities, in conjunction with the Department of Rehabilitation, pursuant to Section 12803.65 and to the extent that funds are available, shall make grants available to counties and local workforce investment boards, through collaborative efforts of public agencies and private organizations, including organizations that serve people with disabilities, to accomplish both of the following purposes:

(a) To develop local strategies, including, but not limited to, regular cross-agency staff training, for enhancing employment opportunities for individuals with disabilities.

(b) To fund comprehensive local or regional benefits planning and outreach programs to assist individuals with disabilities in removing barriers to work.

SEC. 5. Division 10 (commencing with Section 18000) is added to the Unemployment Insurance Code, to read:

DIVISION 10. EMPLOYMENT ASSISTANCE FOR WORKERS WITH DISABILITIES

18000. (a) It is the purpose of this division to ensure that workforce preparation services provided through California's one-stop centers, including information and services provided electronically, are accessible to employers and jobseekers with disabilities.

(b) It is further the intent of the Legislature that one-stop centers provide appropriate services to individuals with disabilities to enhance their employability.

(c) It is further the intent of the Legislature that, in order to achieve the goals specified in subdivisions (a) and (b), local workforce investment boards plan for and report on services to jobseekers and employers with disabilities, including the implementation of the federal Ticket to Work program for those local workforce investment boards and one-stop centers that choose to implement the Ticket to Work program in their local workforce investment areas.

18002. Each local workforce investment board shall establish at least one comprehensive one-stop career center in each local workforce investment area. These one-stop centers shall ensure access to services pursuant to Section 134(d) of the federal Workforce Investment Act of

1998 (29 U.S.C. Sec. 2864(d)), including services for persons with disabilities, including, but not limited to, all of the following:

(a) Outreach, intake, and orientation.

(b) Initial assessments of skills, aptitudes, abilities, and need for support services.

(c) Program eligibility determinations.

(d) Information on the local, regional, and national labor market.

(e) Information on filing for unemployment insurance.

(f) Access to intensive services as needed, including, but not limited to, comprehensive and specialized assessments of skill levels and service needs, development of individual employment plans, group counseling, individual counseling and career planning, case management for participants seeking training services under subdivision (g), and short-term prevocational services, such as learning, communication, interview, and other jobseeking and work related skills to help prepare individuals for unsubsidized employment and training.

(g) Training services, including, but not limited to, occupational skills training, on-the-job training, workplace training and cooperative education programs, private sector training programs, skills upgrade and retraining, entrepreneurial training, job readiness training, adult education, and literacy activities combined with training, and customized training.

18004. The local workforce investment boards shall schedule and conduct regular performance reviews of their one-stop centers to determine whether the centers and providers are providing effective and meaningful opportunities for persons with disabilities to participate in the programs and activities of the centers and providers.

18006. One-stop center counselor staff shall provide accurate information to beneficiaries of Supplemental Security Income and the State Supplemental Program and Social Security Disability Insurance on the implications of work for these individuals. The information shall include, but not be limited to, referrals to appropriate benefits' planners. One-stop center counselor staff shall also provide accurate information to individuals with disabilities on how they may gain access to Medi-Cal benefits pursuant to Section 14007.9 of the Welfare and Institutions Code.

18008. In order to ensure that one-stop career centers operated by local workforce investment boards meet the needs of workers and employers with disabilities, the Governor shall ensure that evaluations conducted pursuant to Sections 134 (a)(2)(B)(ii) and (v) of the federal Workforce Investment Act of 1998 (29 U.S.C. Sec. 2864(a)(2)(B)(ii) and (v)), address how local one-stop centers provide all of the following:

(a) Full access to workforce development services for their disabled community.

(b) Assistive technology to ensure access to services.

(c) Staff training on assessment and service strategies for jobseekers and employers with disabilities.

(d) Representation of the disability community in program planning and service delivery.

(e) The development of regional employment networks to participate in the federal Ticket to Work program and the role of the local board and one-stop centers in the Ticket to Work program.

18010. The California Workforce Investment Board shall report to the Governor and the Legislature by September 30, 2004, on the status of one-stop services to individuals with disabilities and implementation of the federal Ticket to Work program in California.

18012. If permitted by federal law, the California Workforce Investment Board and local workforce investment boards shall include persons with disabilities or their representatives, with a particular effort to include such persons who are not employees of state or local government.

SEC. 6. Section 12300 of the Welfare and Institutions Code is amended to read:

12300. (a) The purpose of this article is to provide in every county in a manner consistent with this chapter and the annual Budget Act those supportive services identified in this section to aged, blind, or disabled persons, as defined under this chapter, who are unable to perform the services themselves and who cannot safely remain in their homes or abodes of their own choosing unless these services are provided.

(b) Supportive services shall include domestic services and services related to domestic services, heavy cleaning, personal care services, accompaniment by a provider when needed during necessary travel to health-related appointments or to alternative resource sites, yard hazard abatement, protective supervision, teaching and demonstration directed at reducing the need for other supportive services, and paramedical services which make it possible for the recipient to establish and maintain an independent living arrangement.

(c) Personal care services shall mean all of the following:

(1) Assistance with ambulation.

(2) Bathing, oral hygiene, and grooming.

(3) Dressing.

(4) Care and assistance with prosthetic devices.

(5) Bowel, bladder, and menstrual care.

(6) Repositioning, skin care, range of motion exercises, and transfers.

(7) Feeding and assurance of adequate fluid intake.

(8) Respiration.

(9) Assistance with self-administration of medications.

(d) Personal care services are available if these services are provided in the beneficiary's home and other locations as may be authorized by the director. Among the locations that may be authorized by the director under this paragraph is the recipient's place of employment if all of the following conditions are met:

(1) The personal care services are limited to those that are currently authorized for a recipient in the recipient's home and those services are to be utilized by the recipient at the recipient's place of employment to enable the recipient to obtain, retain, or return to work. Authorized services utilized by the recipient at the recipient's place of employment shall be services that are relevant and necessary in supporting and maintaining employment. However, workplace services shall not be used to supplant any reasonable accommodations required of an employer by the Americans with Disabilities Act (42 U.S.C. Sec. 12101 et seq.; ADA) or other legal entitlements or third-party obligations.

(2) The provision of personal care services at the recipient's place of employment shall be authorized only to the extent that the total hours utilized at the workplace are within the total personal care services hours authorized for the recipient in the home. Additional personal care services hours may not be authorized in connection with a recipient's employment.

(e) Where supportive services are provided by a person having the legal duty pursuant to the Family Code to provide for the care of his or her child who is the recipient, the provider of supportive services shall receive remuneration for the services only when the provider leaves full-time employment or is prevented from obtaining full-time employment because no other suitable provider is available and where the inability of the provider to provide supportive services may result in inappropriate placement or inadequate care.

These providers shall be paid only for the following:

(1) Services related to domestic services.

(2) Personal care services.

(3) Accompaniment by a provider when needed during necessary travel to health-related appointments or to alternative resource sites.

(4) Protective supervision only as needed because of the functional limitations of the child.

(5) Paramedical services.

(f) To encourage maximum voluntary services, so as to reduce governmental costs, respite care shall also be provided. Respite care is temporary or periodic service for eligible recipients to relieve persons who are providing care without compensation.

(g) A person who is eligible to receive a personal care service or an ancillary service provided pursuant to Section 14132.95 shall not be eligible to receive that same service pursuant to this article.

(h) (1) All services provided pursuant to this article shall be equal in amount, scope, and duration to the same services provided pursuant to Section 14132.95, including any adjustments that may be made to those services pursuant to subdivision (e) of Section 14132.95.

(2) Notwithstanding any other provision of this article, the rate of reimbursement for in-home supportive services provided through any mode of service shall not exceed the rate of reimbursement established under subdivision (j) of Section 14132.95 for the same mode of service unless otherwise provided in the annual Budget Act.

(3) Any recipient receiving services under both Section 14132.95 and this article shall receive no more than 283 hours of service per month, combined, and any recipient of services under this article shall receive no more than the applicable maximum specified in Section 12303.4.

SEC. 7. Section 14007.95 is added to the Welfare and Institutions Code, to read:

14007.95. The department shall report to the Governor and the Legislature any information the department gathers from the California Health Improvement Project, or from any other public or private sources, that may explain the low participation rates in the optional program provided pursuant to Section 14007.9 and any recommendations from the department on actions the state may take to increase participation by eligible persons in a manner that is cost effective for the state and beneficial for the participants.

SEC. 8. Section 14132.95 of the Welfare and Institutions Code is amended to read:

SEC. 8. Section 14132.95 of the Welfare and Institutions Code is amended to read:

14132.95. (a) Personal care services, when provided to a categorically needy person as defined in Section 14050.1 is a covered benefit to the extent federal financial participation is available if these services are:

(1) Provided in the beneficiary's home and other locations as may be authorized by the director subject to federal approval.

(2) Authorized by county social services staff in accordance with a plan of treatment.

(3) Provided by a qualified person.

(4) Provided to a beneficiary who has a chronic, disabling condition that causes functional impairment that is expected to last at least 12 consecutive months or that is expected to result in death within 12 months and who is unable to remain safely at home without the services described in this section.

(b) The department shall seek federal approval of a state plan amendment necessary to include personal care as a medicaid service pursuant to subdivision (f) of Section 440.170 of Title 42 of the Code of

Federal Regulations. For any persons who meet the criteria specified in subdivision (a) or (p), but for whom federal financial participation is not available, eligibility shall be available pursuant to Article 7 (commencing with Section 12300) of Chapter 3, if otherwise eligible.

(c) Subdivision (a) shall not be implemented unless the department has obtained federal approval of the state plan amendment described in subdivision (b), and the Department of Finance has determined, and has informed the department in writing, that the implementation of this section will not result in additional costs to the state relative to state appropriation for in-home supportive services under Article 7 (commencing with Section 12300) of Chapter 3, in the 1992–93 fiscal year.

(d) (1) For purposes of this section, personal care services shall mean all of the following:

(A) Assistance with ambulation.

(B) Bathing, oral hygiene and grooming.

(C) Dressing.

(D) Care and assistance with prosthetic devices.

(E) Bowel, bladder, and menstrual care.

(F) Skin care.

(G) Repositioning, range of motion exercises, and transfers.

(H) Feeding and assurance of adequate fluid intake.

(I) Respiration.

(J) Paramedical services.

(K) Assistance with self-administration of medications.

(2) Ancillary services including meal preparation and cleanup, routine laundry, shopping for food and other necessities, and domestic services may also be provided as long as these ancillary services are subordinate to personal care services. Ancillary services may not be provided separately from the basic personal care services.

(e) (1) (A) After consulting with the State Department of Social Services, the department shall adopt emergency regulations to establish the amount, scope, and duration of personal care services available to persons described in subdivision (a) in the fiscal year whenever the department determines that General Fund expenditures for personal care services provided under this section and expenditures of both General Fund moneys and federal funds received under Title XX of the federal Social Security Act for services pursuant to Article 7 (commencing with Section 12300) of Chapter 3, are expected to exceed the General Fund appropriation and the federal appropriation under Title XX of the federal Social Security Act provided for the 1992–93 fiscal year pursuant to Article 7 (commencing with Section 12300) of Chapter 3, as it read on June 30, 1992, as adjusted for caseload growth or as increased in the Budget Act or appropriated by statute. At least 30 days prior to filing

these regulations with the Secretary of State, the department shall give notice of the expected content of these regulations to the fiscal committees of both houses of the Legislature.

(B) In establishing the amount, scope, and duration of personal care services, the department shall ensure that General Fund expenditures for personal care services provided for under this section and expenditures of both General Fund moneys and federal funds received under Title XX of the federal Social Security Act for services pursuant to Article 7 (commencing with Section 12300) of Chapter 3, do not exceed the General Fund appropriation and the federal appropriation under Title XX of the federal Social Security Act provided for the 1992–93 fiscal year pursuant to Article 7 (commencing with Section 12300) of Chapter 3, as it read on June 30, 1992, as adjusted for caseload growth or as increased in the Budget Act or appropriated by statute.

(C) For purposes of this subdivision, ''caseload growth'' means an adjustment factor determined by the department based on (1) growth in the number of persons eligible for benefits under Chapter 3 (commencing with Section 12000) on the basis of their disability, (2) the average increase in the number of hours in the program established pursuant to Article 7 (commencing with Section 12300) of Chapter 3 in the 1988–89 to 1992–93 fiscal years, inclusive, due to the level of impairment, and (3) any increase in program costs that is required by an increase in the mandatory minimum wage.

(2) In establishing the amount, scope, and duration of personal care services pursuant to this subdivision, the department may define and take into account, among other things:

(A) The extent to which the particular personal care services are essential or nonessential.

(B) Standards establishing the medical necessity of the services to be provided.

(C) Utilization controls.

(D) A minimum number of hours of personal care services that must first be assessed as needed as a condition of receiving personal care services pursuant to this section.

The level of personal care services shall be established so as to avoid, to the extent feasible within budgetary constraints, medical out-of-home placements.

(3) To the extent that General Fund expenditures for services provided under this section and expenditures of both General Fund moneys and federal funds received under Title XX of the federal Social Security Act for services pursuant to Article 7 (commencing with Section 12300) of Chapter 3 in the 1992–93 fiscal year, adjusted for caseload growth, exceed General Fund expenditures for services provided under this section and expenditures of both General Fund

moneys and federal funds received under Title XX of the federal Social Security Act for services pursuant to Article 7 (commencing with Section 12300) of Chapter 3 in any fiscal year, the excess of these funds shall be expended for any purpose as directed in the Budget Act or as otherwise statutorily disbursed by the Legislature.

(f) Services pursuant to this section shall be rendered, under the administrative direction of the State Department of Social Services, in the manner authorized in Article 7 (commencing with Section 12300) of Chapter 3, for the In-Home Supportive Services program. A provider of personal care services shall be qualified to provide the service and shall be a person other than a member of the family. For purposes of this section, a family member means a parent of a minor child or a spouse.

(g) A beneficiary who is eligible for assistance under this section shall receive services that do not exceed 283 hours per month of personal care services.

(h) Personal care services shall not be provided to residents of facilities licensed by the department, and shall not be provided to residents of a community care facility or a residential care facility for the elderly licensed by the Community Care Licensing Division of the State Department of Social Services.

(i) Subject to any limitations that may be imposed pursuant to subdivision (e), determination of need and authorization for services shall be performed in accordance with Article 7 (commencing with Section 12300) of Chapter 3.

(j) (1) To the extent permitted by federal law, reimbursement rates for personal care services shall be equal to the rates in each county for the same mode of services in the In-Home Supportive Services program pursuant to Article 7 (commencing with Section 12300) of Chapter 3, plus any increase provided in the annual Budget Act for personal care services rates or included in a county budget pursuant to paragraph (2).

(2) (A) The department shall establish a provider reimbursement rate methodology to determine payment rates for the individual provider mode of service that does all of the following:

(i) Is consistent with the functions and duties of entities created pursuant to Section 12301.6.

(ii) Makes any additional expenditure of state general funds subject to appropriation in the annual Budget Act.

(iii) Permits county-only funds to draw down federal financial participation consistent with federal law.

(B) This ratesetting method shall be in effect in time for any rate increases to be included in the annual Budget Act.

(C) The department may, in establishing the ratesetting method required by subparagraph (A), do both of the following:

(i) Deem the market rate for like work in each county, as determined by the Employment Development Department, to be the cap for increases in payment rates for individual practitioner services.

(ii) Provide for consideration of county input concerning the rate necessary to ensure access to services in that county.

(D) If an increase in individual practitioner rates is included in the annual Budget Act, the state-county sharing ratio shall be as established in Section 12306. If the annual Budget Act does not include an increase in individual practitioner rates, a county may use county-only funds to meet federal financial participation requirements consistent with federal law.

(3) (A) By November 1, 1993, the department shall submit a state plan amendment to the federal Health Care Financing Administration to implement this subdivision. To the extent that any element or requirement of this subdivision is not approved, the department shall submit a request to the federal Health Care Financing Administration for any waivers as would be necessary to implement this subdivision.

(B) The provider reimbursement ratesetting methodology authorized by the amendments to this subdivision in the 1993–94 Regular Session of the Legislature shall not be operative until all necessary federal approvals have been obtained.

(k) (1) The State Department of Social Services shall, by September 1, 1993, notify the following persons that they are eligible to participate in the personal care services program:

(A) Persons eligible for services pursuant to the Pickle Amendment, as adopted October 28, 1976.

(B) Persons eligible for services pursuant to subsection (c) of Section 1383c of Title 42 of the United States Code.

(2) The State Department of Social Services shall, by September 1, 1993, notify persons to whom paragraph (1) applies and who receive advance payment for in-home supportive services that they will qualify for services under this section without a share of cost if they elect to accept payment for services on an arrears rather than an advance payment basis.

(*l*) An individual who is eligible for services subject to the maximum amount specified in subdivision (b) of Section 12303.4 shall be given the option of hiring his or her own provider.

(m) The county welfare department shall inform in writing any individual who is potentially eligible for services under this section of his or her right to the services.

(n) It is the intent of the Legislature that this entire section be an inseparable whole and that no part of it be severable. If any portion of this section is found to be invalid, as determined by a final judgment of a court of competent jurisdiction, this section shall become inoperative.

(o) Paragraphs (2) and (3) of subdivision (a) shall be implemented so as to conform to federal law authorizing their implementation.

(p) (1) Personal care services shall be provided as a covered benefit to a medically needy aged, blind, or disabled person, as defined in subdivision (a) of Section 14051, to the same extent and under the same requirements as they are provided under subdivision (a) of this section to a categorically needy, aged, blind, or disabled person, as defined in subdivision (a) of Section 14050.1, and to the extent that federal financial participation is available.

(2) The department shall seek federal approval of a state plan amendment necessary to include personal care services described in paragraph (1) as a medicaid service pursuant to subdivision (f) of Section 440.170 of Title 42 of the Code of Federal Regulations.

(3) In the event that the Department of Finance determines that expenditures of both General Fund moneys for personal care services provided under this subdivision to medically needy aged, blind, or disabled persons together with expenditures of both General Fund moneys and federal funds received under Title XX of the federal Social Security Act for all aged, blind, and disabled persons receiving in-home supportive services pursuant to Article 7 (commencing with Section 12300) of Chapter 3, in the 2000–01 fiscal year or in any subsequent fiscal year, are expected to exceed the General Fund appropriation and the federal appropriation received under Title XX of the federal Social Security Act for expenditures for all aged, blind, and disabled persons receiving in-home supportive services provided in the 1999–2000 fiscal year pursuant to Article 7 (commencing with Section 12300) of Chapter 3, as it read on June 30, 1998, as adjusted for caseload growth or as changed in the Budget Act or by statute or regulation, then this subdivision shall cease to be operative on the first day of the month that begins after the expiration of a period of 30 days subsequent to a notification in writing by the Director of the Department of Finance to the chairperson of the committee in each house that considers appropriations, the chairpersons of the committees and the appropriate subcommittees in each house that consider the State Budget, and the Chairperson of the Joint Legislative Budget Committee.

(4) Solely for purposes of paragraph (3), caseload growth means an adjustment factor determined by the department based on:

(A) Growth in the number of persons eligible for benefits under Chapter 3 (commencing with Section 12000) on the basis of their disability.

(B) The average increase in the number of hours in the program established pursuant to Article 7 (commencing with Section 12300) of Chapter 3 in the 1994–95 to 1998–99 fiscal years, inclusive, due to the level of impairment.

(C) Any increase in program cost that is required by an increase in hourly costs pursuant to the Budget Act or statute.

(5) In the event of a final judicial determination by any court of appellate jurisdiction or a final determination by the Administrator of the federal Centers for Medicare and Medicaid Services that personal care services must be provided to any medically needy person who is not aged, blind, or disabled, then this subdivision shall cease to be operative on the first day of the first month that begins after the expiration of a period of 30 days subsequent to a notification in writing by the Director of Finance to the chairperson of the committee in each house that considers appropriations, the chairpersons of the committees and the appropriate subcommittees in each house that consider the State Budget, and the Chairperson of the Joint Legislative Budget Committee.

(6) If this subdivision ceases to be operative, all aged, blind, and disabled persons who would have received or been eligible to receive in-home supportive services pursuant to Article 7 (commencing with Section 12300) of Chapter 3, but for receiving services under this subdivision, shall be eligible immediately upon this section becoming inoperative for services pursuant to Article 7 (commencing with Section 12300) of Chapter 3.

(7) The department shall implement this subdivision on April 1, 1999, but only if the department has obtained federal approval of the state plan amendments described in paragraph (2) of this subdivision.

SEC. 9. Section 14132.955 is added to the Welfare and Institutions Code, to read:

14132.955. Personal care services that are provided pursuant to Section 14132.95 shall include services in the recipient's place of employment if both of the following conditions are met:

(a) The personal care services are limited to those that are currently authorized for the recipient in the recipient's home and those services are to be utilized by the recipient at the recipient's place of employment to enable the recipient to obtain, retain, or return to, work. Authorized services utilized by the recipient at the recipient's place of employment shall be services that are relevant and necessary in supporting and maintaining employment. However, work place services shall not be used to supplant any reasonable accommodations required of an employer by the Americans with Disabilities Act (42 U.S.C. Sec. 12101 et seq.) or other legal entitlements or third-party obligations.

(b) The provision of personal care services at the recipient's place of employment shall be authorized only to the extent that the total hours utilized at the work place are within the total personal care services hours authorized for the recipient in the home. Additional personal care services hours may not be authorized in connection with a recipient's employment.

SEC. 10. 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 1089

An act to add Section 2717 to the Business and Professions Code, relating to nursing, and making an appropriation therefor.

[Approved by Governor September 29, 2002. Filed with Secretary of State September 29, 2002.]

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

SECTION 1. Section 2717 is added to the Business and Professions Code, to read:

2717. (a) The board shall collect and analyze workforce data from its licensees for future workforce planning. The board may collect the data at the time of license renewal or from a scientifically selected random sample of its licensees. The board shall produce reports on the workforce data it collects, at a minimum, on a biennial basis. The board shall maintain the confidentially of the information it receives from licensees under this section and shall only release information in an aggregate form that cannot be used to identify an individual. The workforce data collected by the board shall include, at a minimum, employment information such as hours of work, number of positions held, time spent in direct patient care, clinical practice area, type of employer, and work location. The data shall also include future work intentions, reasons for leaving or reentering nursing, job satisfaction ratings, and demographic data.

(b) Aggregate information collected pursuant to this section shall be placed on the board's Internet Web site.

(c) The board is authorized to expend the sum of one hundred forty-five thousand dollars ($145,000) from the Board of Registered Nursing Fund in the Professions and Vocations Fund for the purpose of implementing this section.

(d) This section shall be implemented by the board on or before July 1, 2003.

CHAPTER 1090

An act to add Chapter 9.7 (commencing with Section 13887) to Title 6 of Part 4 of the Penal Code, relating to sexual assault.

[Approved by Governor September 29, 2002. Filed with Secretary of State September 29, 2002.]

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

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

(a) Habitual sexual assault offenders pose a significant risk to the welfare and safety of the residents of California.

(b) Predatory sex offenders frequently travel to areas outside of the jurisdictions where they reside to evade surveillance and possible arrest by local law enforcement agencies for probation or parole violations.

(c) Therefore, the Legislature encourages the formation of regional law enforcement task forces consisting of officers and agents from several law enforcement agencies organized for the explicit purpose of reducing violent sexual assaults through proactive surveillance and arrests of habitual sexual offenders.

SEC. 2. Chapter 9.7 (commencing with Section 13887) is added to Title 6 of Part 4 of the Penal Code, to read:

CHAPTER 9.7. COUNTY SEXUAL ASSAULT FELONY ENFORCEMENT (SAFE) TEAM PROGRAM

13887. Any county may establish and implement a sexual assault felony enforcement (SAFE) team program pursuant to the provisions of this chapter.

13887.1. (a) The mission of this program shall be to reduce violent sexual assault offenses in the county through proactive surveillance and arrest of habitual sexual offenders, as defined in Section 667.71, and strict enforcement of registration requirements for sex offenders pursuant to Section 290.

(b) The proactive surveillance and arrest authorized by this chapter shall be conducted within the limits of existing statutory and constitutional law.

13887.2. The regional SAFE teams may consist of officers and agents from the following law enforcement agencies:

(a) Police departments.

(b) Sheriff's departments.

(c) The Bureau of Investigations of the Office of the District Attorney.

(d) County probation departments.

(e) To the extent that these agencies have available resources, the following law enforcement agencies:

(1) The Bureau of Investigations of the California Department of Justice.

(2) The California Highway Patrol.

(3) The State Department of Corrections.

(4) The Federal Bureau of Investigation.

13887.3. The program established pursuant to this chapter shall have the following objectives:

(a) To identify, monitor, arrest, and assist in the prosecution of habitual sexual offenders who violate the terms and conditions of their probation or parole, who fail to comply with the registration requirements of Section 290, or who commit new sexual assault offenses.

(b) To collect data to determine if the proactive law enforcement procedures adopted by the program are effective in reducing violent sexual assault offenses.

(c) To develop procedures for operating a multijurisdictional regional task force.

13887.4. Nothing in this chapter shall be construed to authorize the otherwise unlawful violation of any person's rights under the law.

CHAPTER 1091

An act to add Article 6.2 (commencing with Section 8592) to Chapter 7 of Division 1 of Title 2 of the Government Code, relating to public safety.

[Approved by Governor September 29, 2002. Filed with Secretary of State September 29, 2002.]

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

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

(a) Since the terrorist attacks in the United States on September 11, 2001, the federal government has recognized the significant need for developing an integrated public safety communication system in order

to minimize the threat to the health and safety of the public during an emergency.

(b) Currently, public safety and emergency response teams operate radio communication systems on different frequencies of spectrum allocated for public safety use, which restricts the ability of these teams to communicate with each other and can delay the delivery of critical resources during an emergency.

(c) An integrated public safety communication system will enable public safety and emergency response personnel to communicate more quickly and efficiently during an emergency by allowing communication both within and among different public safety and emergency response teams.

(d) California's public safety and emergency response entities currently are operating near, or in excess of, the capacity of their radio communication systems.

(e) The development of an integrated public safety communication system will help relieve crowding on public safety radio spectrum, provide enhanced system functionality, and improve overall efficiency of communication by public safety entities on a day-to-day basis and during emergencies.

SEC. 2. Article 6.2 (commencing with Section 8592) is added to Chapter 7 of Division 1 of Title 2 of the Government Code, to read:

Article 6.2. Public Safety Communication Act of 2002

8592. This article shall be known and may be cited as the Public Safety Communication Act of 2002.

8592.1. For purposes of this article:

(a) ''Public safety spectrum'' means the spectrum allocated by the Federal Communications Commission for operation of interoperable and general use radio communication systems for public safety purposes within the state.

(b) ''Committee'' means the Public Safety Radio Strategic Planning Committee, which was established in December 1994 in recognition of the need to improve existing public radio systems and to develop interoperability among public safety departments, and which consists of representatives of the following state entities:

(1) The California Highway Patrol.
(2) The Department of Transportation.
(3) The Department of Corrections.
(4) The Department of Parks and Recreation.
(5) The Department of Fish and Game.
(6) The Department of Forestry and Fire Protection.
(7) The Department of Justice.

(8) The Department of Water Resources.
(9) The Office of Emergency Services.
(10) The Emergency Medical Services Authority.
(11) The Department of the Youth Authority.
(12) The Department of General Services.

8592.2. (a) The committee shall have primary responsibility in state government for developing and implementing a statewide integrated public safety communication system for state government agencies that facilitates interoperability and other shared uses of public safety spectrum with local and federal agencies, consistent with decisions and regulations of the Federal Communications Commission. In developing this system, the committee shall seek input from, and act as a liaison to, any regional planning committee or other federal, state, or local entity with responsibility for developing, operating, or monitoring interoperability of public safety spectrum.

(b) The committee shall elect from among its members a chair with responsibility for leadership in implementing this article.

(c) The committee shall hold a meeting to address the requirements of this article no later than April 1, 2003.

8592.3 (a) The committee shall consult with the following organizations and entities:

(1) California State Peace Officers Association.
(2) California Police Chiefs Association.
(3) California State Sheriffs' Association.
(4) California Professional Firefighters.
(5) California Fire Chiefs Association.
(6) California State Association of Counties.
(7) League of California Cities.
(8) California State Firefighters Association.
(9) California Coalition of Law Enforcement Associations.
(10) California Correctional Peace Officers Association.

(b) Each organization or entity listed in subdivision (a) shall designate a representative to work with the committee to develop agreements for interoperability or other shared use of public safety spectrum between the applicable organization or entity and local and federal agencies that operate a communication system on public safety spectrum and that have capacity and technical ability for interoperability or other shared use.

(c) The committee shall develop a standard memorandum of understanding that sets forth general terms for interoperability or other shared use between a local or federal agency and a state agency, which may be modified as necessary for a particular agreement entered into pursuant to subdivision (b).

8592.4. The committee shall determine which agencies need new or upgraded communication equipment in order to enter into an agreement for interoperability or other shared use of public safety spectrum and shall establish a program for equipment purchase. In establishing this program, the board shall recommend the purchase of, equipment that will enable the migration to accepted industry standards for interoperability consistent with the public safety digital communications standards of the American National Standards Institute and the Telecommunications Information Association.

8592.5. The committee shall report to the Legislature, no later than January 1, 2004, on its progress in implementing this article.

CHAPTER 1092

An act relating to community impact statements.

[Approved by Governor September 29, 2002. Filed with Secretary of State September 29, 2002.]

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

SECTION 1. The Judicial Council shall conduct a study of the potential effects, implementation issues, and alternatives to a policy requiring courts to consider community impact statements submitted by representatives of a community affected by a misdemeanor crime describing the economic, social, and physical effect the offense has had on persons residing in, and businesses and schools operating in, the community where the offense occurred. It is the intent of the Legislature that the study reflect input from an appropriate cross-section of stakeholders, which may include city attorneys, public defenders or defense council, district attorneys, court representatives, members of the public, including neighborhood associations and public interest groups, experts in jurisprudence or the administration of justice, and any other persons identified by the Judicial Council as able to contribute to the substance of the study. The Judicial Council shall report its findings and recommendations to the Legislature on or before December 31, 2004.

CHAPTER 1093

An act to add Article 5.5 (commencing with Section 66055) to Chapter 2 of Part 40 of the Education Code, relating to nursing education.

[Approved by Governor September 29, 2002. Filed with Secretary of State September 29, 2002.]

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

SECTION 1. (a) The Legislature finds and declares all of the following:

(1) California is experiencing a severe nursing shortage that threatens the public health care system.

(2) California has the second lowest ratio of registered nurses per 100,000 population in the country, and this shortage is expected to worsen in the coming years.

(3) Due to lack of capacity, the California Community Colleges and the California State University and University of California systems are unable to meet the demands for increased enrollment for students into the nursing programs.

(4) Artificial barriers, such as admission requirements and a variety of prerequisites and corequisites required for nursing programs, prevent students from matriculating in a timely manner.

(5) There is a lack of diversity among faculty and students to meet the needs of California residents.

(6) The Community College Intersegmental Major Preparation Articulated Curriculum and the California State University Common Core Alignment projects have made great strides in reforming nursing education to meet the needs of California residents, and continuation of their efforts is critical.

(b) It is the intent of the Legislature to require the Chancellor of the California Community Colleges and the Chancellor of the California State University to develop a seamless articulation between the community colleges and California State University nursing programs by standardizing admissions requirements prerequisites, and corequisites.

SEC. 2. Article 5.5 (commencing with Section 66055) is added to Chapter 2 of Part 40 of the Education Code, to read:

Article 5.5. Nursing Programs

66055. Not later than September 1, 2005, the Chancellor of the California Community Colleges shall do all of the following:

(a) Encourage community college districts to standardize all nursing program prerequisites on a statewide basis.

(b) Encourage community college districts to negotiate and implement articulation agreements with the campuses of the California State University to which they send a significant number of nursing students.

(c) Implement the recommendations of the Intersegmental Major Preparation Articulated Curriculum (IMPAC) project not later than September 1, 2004.

66055.5. Not later than September 1, 2005, the Chancellor of the California State University shall do all of the following:

(a) Standardize all nursing education program prerequisites for the various campuses of the California State University on a systemwide basis.

(b) Require the campuses of the university that maintain nursing education programs to negotiate and implement articulation agreements with community college districts from which they receive a significant number of nursing students.

(c) Implement the recommendations of the Intersegmental Major Preparation Articulated Curriculum (IMPAC) project not later than September 1, 2004.

CHAPTER 1094

An act to amend Sections 170.1 and 1281.9 of the Code of Civil Procedure, relating to arbitration.

[Approved by Governor September 29, 2002. Filed with Secretary of State September 29, 2002.]

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

SECTION 1. Section 170.1 of the Code of Civil Procedure is amended to read:

170.1. (a) A judge shall be disqualified if any one or more of the following is true:

(1) The judge has personal knowledge of disputed evidentiary facts concerning the proceeding.

A judge shall be deemed to have personal knowledge within the meaning of this paragraph if the judge, or the spouse of the judge, or a person within the third degree of relationship to either of them, or the spouse of such a person is to the judge's knowledge likely to be a material witness in the proceeding.

(2) The judge served as a lawyer in the proceeding, or in any other proceeding involving the same issues he or she served as a lawyer for any party in the present proceeding or gave advice to any party in the present proceeding upon any matter involved in the action or proceeding.

A judge shall be deemed to have served as a lawyer in the proceeding if within the past two years:

(A) A party to the proceeding or an officer, director, or trustee of a party was a client of the judge when the judge was in the private practice of law or a client of a lawyer with whom the judge was associated in the private practice of law; or

(B) A lawyer in the proceeding was associated in the private practice of law with the judge.

A judge who served as a lawyer for or officer of a public agency which is a party to the proceeding shall be deemed to have served as a lawyer in the proceeding if he or she personally advised or in any way represented the public agency concerning the factual or legal issues in the proceeding.

(3) The judge has a financial interest in the subject matter in a proceeding or in a party to the proceeding.

A judge shall be deemed to have a financial interest within the meaning of this paragraph if:

(A) A spouse or minor child living in the household has a financial interest; or

(B) The judge or the spouse of the judge is a fiduciary who has a financial interest.

A judge has a duty to make reasonable efforts to inform himself or herself about his or her personal and fiduciary interests and those of his or her spouse and the personal financial interests of children living in the household.

(4) The judge, or the spouse of the judge, or a person within the third degree of relationship to either of them, or the spouse of such a person is a party to the proceeding or an officer, director, or trustee of a party.

(5) A lawyer or a spouse of a lawyer in the proceeding is the spouse, former spouse, child, sibling, or parent of the judge or the judge's spouse or if such a person is associated in the private practice of law with a lawyer in the proceeding.

(6) For any reason (A) the judge believes his or her recusal would further the interests of justice, (B) the judge believes there is a substantial doubt as to his or her capacity to be impartial, or (C) a person aware of the facts might reasonably entertain a doubt that the judge would be able to be impartial. Bias or prejudice towards a lawyer in the proceeding may be grounds for disqualification.

(7) By reason of permanent or temporary physical impairment, the judge is unable to properly perceive the evidence or is unable to properly conduct the proceeding.

(8) The judge has a current arrangement concerning prospective employment or other compensated service as a dispute resolution neutral or is participating in, or, within the last two years has participated in, discussions regarding such prospective employment or service, and either of the following applies:

(A) The arrangement is, or the discussion was, with a party to the proceeding.

(B) The matter before the judge includes issues relating to the enforcement of an agreement to submit a dispute to alternative dispute resolution or the appointment or use of a dispute resolution neutral.

For purposes of this paragraph, ''party'' includes the parent, subsidiary, or other legal affiliate of any entity that is a party and is involved in the transaction, contract, or facts that gave rise to the issues subject to the proceeding.

For purposes of this paragraph, a ''dispute resolution neutral'' means an arbitrator, mediator, temporary judge appointed under Section 21 of Article VI of the California Constitution, referee appointed under Section 638 or 639, special master, neutral evaluator, settlement officer, or settlement facilitator.

(b) A judge before whom a proceeding was tried or heard shall be disqualified from participating in any appellate review of that proceeding.

(c) At the request of a party or on its own motion an appellate court shall consider whether in the interests of justice it should direct that further proceedings be heard before a trial judge other than the judge whose judgment or order was reviewed by the appellate court.

SEC. 2. Section 1281.9 of the Code of Civil Procedure is amended to read:

1281.9. (a) In any arbitration pursuant to an arbitration agreement, when a person is to serve as a neutral arbitrator, the proposed neutral arbitrator shall disclose all matters that could cause a person aware of the facts to reasonably entertain a doubt that the proposed neutral arbitrator would be able to be impartial, including all of the following:

(1) The existence of any ground specified in Section 170.1 for disqualification of a judge. For purposes of paragraph (8) of subdivision (a) of Section 170.1, the proposed neutral arbitrator shall disclose whether or not he or she has a current arrangement concerning prospective employment or other compensated service as a dispute resolution neutral or is participating in, or, within the last two years, has participated in, discussions regarding such prospective employment or service with a party to the proceeding.

(2) Any matters required to be disclosed by the ethics standards for neutral arbitrators adopted by the Judicial Council pursuant to this chapter.

(3) The names of the parties to all prior or pending noncollective bargaining cases in which the proposed neutral arbitrator served or is serving as a party arbitrator for any party to the arbitration proceeding or for a lawyer for a party and the results of each case arbitrated to conclusion, including the date of the arbitration award, identification of

the prevailing party, the names of the parties' attorneys and the amount of monetary damages awarded, if any. In order to preserve confidentiality, it shall be sufficient to give the name of any party who is not a party to the pending arbitration as ''claimant'' or ''respondent'' if the party is an individual and not a business or corporate entity.

(4) The names of the parties to all prior or pending noncollective bargaining cases involving any party to the arbitration or lawyer for a party for which the proposed neutral arbitrator served or is serving as neutral arbitrator, and the results of each case arbitrated to conclusion, including the date of the arbitration award, identification of the prevailing party, the names of the parties' attorneys and the amount of monetary damages awarded, if any. In order to preserve confidentiality, it shall be sufficient to give the name of any party not a party to the pending arbitration as ''claimant'' or ''respondent'' if the party is an individual and not a business or corporate entity.

(5) Any attorney-client relationship the proposed neutral arbitrator has or had with any party or lawyer for a party to the arbitration proceeding.

(6) Any professional or significant personal relationship the proposed neutral arbitrator or his or her spouse or minor child living in the household has or has had with any party to the arbitration proceeding or lawyer for a party.

(b) Subject only to the disclosure requirements of law, the proposed neutral arbitrator shall disclose all matters required to be disclosed pursuant to this section to all parties in writing within 10 calendar days of service of notice of the proposed nomination or appointment.

(c) For purposes of this section, ''lawyer for a party'' includes any lawyer or law firm currently associated in the practice of law with the lawyer hired to represent a party.

(d) For purposes of this section, ''prior cases'' means noncollective bargaining cases in which an arbitration award was rendered within five years prior to the date of the proposed nomination or appointment.

(e) For purposes of this section, ''any arbitration'' does not include an arbitration conducted pursuant to the terms of a public or private sector collective bargaining agreement.

CHAPTER 1095

An act to add Chapter 39 (commencing with Section 25100) to Part 13 of Division 1 of Title 1 of the Education Code, relating to retirement.

[Approved by Governor September 29, 2002. Filed with Secretary of State September 29, 2002.]

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

SECTION 1. It is the intent of the Legislature, in enacting this act, to do all of the following:

(a) To provide employees of local school districts, community college districts, and county offices of education who are eligible to contribute voluntarily to tax-deferred retirement investment options with specific information about tax-deferred products and the registered companies that offer them.

(b) To provide employees of local school districts, community college districts, and county offices of education with information that allows these employees to make informed decisions in selecting tax-deferred retirement investment products described in Section 403(b) of the Internal Revenue Code of 1986 and the vendors that provide them by establishing a registration process within the State Teachers' Retirement System for participating vendors.

(c) To provide employees of local school districts, community college districts, and county offices of education and other interested parties, with access to an impartial information bank to compare among registered vendors and investment options available, including information related to participant cost, participant education, vendor experience, other vendor services, and access to all performance and other prospectus disclosures, as required by the National Association of Securities Dealers and the Securities and Exchange Commission.

(d) To require that the actual costs associated with the initial establishment and continuing administration of the investment registration process and the provision of the information bank and costs associated with publicizing the availability of the information bank to local school districts, community college districts, and county offices of education are borne equally by the participating registered vendors based on the total number of registrants.

(e) To enable all local school districts, community college districts, and county offices of education to provide employees notice of available retirement investment products from registered vendors.

(f) To provide a mechanism for ensuring that employees of local school districts, community college districts, and county offices of education are aware of, and have access to, the information provided in the impartial investment information bank maintained by the board.

SEC. 2. Chapter 39 (commencing with Section 25100) is added to Part 13 of Division 1 of Title 1 of the Education Code, to read:

CHAPTER 39. SCHOOL EMPLOYER RETIREMENT INVESTMENT PRODUCT VENDOR REGISTRATION PROCESS AND INFORMATION BANK

25100. (a) The board shall establish a vendor registration process through which information about tax-deferred retirement investment products as described in Section 403(b) of the Internal Revenue Code of 1986 shall be made available for consideration by public employees of all local school districts, community college districts, and county offices of education.

(b) For the purposes of this chapter, ''403(b) product or 403(b) products'' means tax-deferred retirement investment products as described in Section 403(b) of the Internal Revenue Code of 1986.

(c) For the purposes of this chapter, ''vendor'' means a public retirement system, broker-dealer, registered investment company, or life insurance company qualified to do business in California that provides 403(b) products. ''Vendor'' does not include individual registered representatives, brokers, financial planners, or agents.

25101. A prospective vendor of 403(b) products that offers those products, or the products of other 403(b) vendors, to local school districts, community college districts, county offices of education and their employees, shall register those products with the board pursuant to this chapter. Registered vendors shall offer only registered 403(b) products as funding vehicles for 403(b) plans.

(a) Prospective vendors shall be registered with the board based upon a complete response to the disclosures required by this subdivision. This information shall be included in the impartial investment information bank established pursuant to Section 25104. The prospective vendors shall provide the following information:

(1) A statement of experience in California and in other states in providing retirement annuities, custodial account mutual fund arrangements, or other retirement products and related financial services under public employer retirement plans.

(2) A characterization by the vendor of its offering as either an annuity or custodial account, as defined under Sections 403(b)(1) and 403(b)(7) of Internal Revenue Code, respectively.

(3) A disclosure of all expenses paid directly or indirectly by retirement plan participants, including, but not limited to, penalties for early withdrawals, declining or fixed withdrawal charges, surrender or deposit charges, management fees, and annual fees, supported by documentation as required for prospectus disclosure by the National Association of Securities Dealers and the Securities and Exchange Commission. Vendors shall be required to provide information regarding the impact of product fees upon a hypothetical investment, as described in Section 25104.

(4) The types of products, product features, including presence of two tier annuity features, services offered to participants, and information about how to access product prospectuses or other relevant product information.

(5) A discussion of the ability, experience, and commitment of the vendor to provide retirement counseling and education services, including, but not limited to, access to group meetings and individual counseling by various means, including telephone and telecommunications devices for the deaf (TDD), Internet, and face-to-face consultations by registered representatives.

(6) A statement of the financial strength and stability of the vendor, as may be applicable, by identifying its ratings assigned by nationally recognized rating services that evaluate the financial strength of life insurance, mutual funds, and other similar companies.

(7) The location of offices and counselors, or method of distribution, of the vendor relative to serving local school districts, community college districts, and county offices of education and their employees in California.

(8) A description of the ability of the vendor to comply with all applicable provisions of federal and state law governing retirement plans, including minimum distribution requirements and contribution limits.

(9) To the extent applicable, the demonstrated ability of the vendor to offer an appropriate array of accumulation funding options, including, but not limited to, a diversified mix of value, growth, growth and income, hybrid and index funds or accounts across large, mid, and small capitalization asset classes, both domestic and international. These investment products may include mutual funds, group or individual annuity contracts, fixed or variable annuity contracts, individual retirement annuities, interests in trust and collective trusts, separate accounts, and other financial instruments.

(10) A discussion of the range of administrative and customer services provided, including asset allocation, accounting and administration of benefits for individual participants, recordkeeping for individual participants, asset purchase, control, and safekeeping, execution of a participant's instructions as to asset and contribution allocation, calculation of daily net asset values, direct access for participants to their account information, periodic reporting to active participants, not less than quarterly, on their account balances and transactions, and compliance with the standard of care applicable in the provision of investment services and consistent with federal law.

(11) Certification by the vendor that the information provided to the board accurately reflects the provisions of the Section 403(b) products they register pursuant to this chapter.

(b) Registration may not be conditioned upon the content of the information.

(c) Vendors shall supply information and data in the format required by the board.

25102. Registration shall be offered to vendors once annually, and renewal of registration shall be required at least once every five years thereafter for vendors that wish to continue to participate. The board shall provide public notice prior to the initial registration, annual registration, and registration renewal periods. The board may require, through a password-based update system that allows vendors to access the registration list for the purposes of updating their product information, or through other means, an update of the information required to be provided under Section 25101 with each registration renewal. Registered vendors shall submit to the board within the time required by the Securities and Exchange Commission an amendment to the information required to be provided under Section 25101 to reflect material changes to the products or services offered that occur between registration or renewal periods. Registered vendors may register additional 403(b) products with the board between registration or renewal periods by providing the board the information required under Section 25101 and fees required under subdivision (c) of Section 25108. Upon receipt of information reflecting material changes or additions to the products or services offered by registered vendors that occur between registration or renewal periods, the board shall reflect those changes in the impartial investment information bank established pursuant to Section 25104 within the time required by the Securities and Exchange Commission.

25103. (a) The board may remove a vendor from the registry if the vendor submits materially inaccurate information to the board, does not remit assessed fees within 60 days, or fails to submit notice of material changes to their registered investment products, pursuant to Section 25102. Vendors found to have submitted materially inaccurate information to the board shall be allowed 60 days to correct the information. The board may refer vendors that submit information required under Section 25102 that is materially inaccurate and may constitute conduct prohibited by the National Association of Securities Dealers and the California Department of Insurance to those entities.

(b) The board shall remove a vendor from the registry if the vendor is not licensed or has their license revoked by the National Association of Securities Dealers or the California Department of Insurance for engaging in conduct prohibited by those entities.

(c) The board shall establish an appeals process pursuant to Section 22219 for vendors that are denied registration or removed from the registry.

25104. (a) The board shall maintain an impartial investment information bank, via an Internet Web site, containing the information required by Section 25101 about the retirement investment products offered by each registered vendor and objective comparisons of vendors and types of products.

(b) The information bank shall include information on investment performance based upon the investment's average annual total return, as measured by a nationally recognized rating service selected by the board for standard periods of time of not less than one year.

(c) The Web site shall include a table showing, for each registered fund, the total fee cost in dollars incurred by a shareholder who initially invested ten thousand dollars ($10,000), earned a 5 percent rate of return for one, five, 10, 15, and 20 year time periods. This table shall be accompanied by a disclaimer that the rate of return is for purposes of illustrating the respective impacts of different fee amounts on each investment, and is not to predict future investment returns.

(d) The board shall have the authority to organize data, but may not subjectively rank or give preference to a vendor or product.

25105. The board shall include notice of the existence of, and the Internet Web site address for, the impartial investment information bank in each newsletter sent to members. The board shall include a notice in the individual account statements of members of the Defined Benefit Program and participants of the Cash Balance Benefit Program that explains the purpose and Web site address of the impartial investment information bank.

25106. The board shall design the information bank Internet Web site and include retirement investment product plan information and education materials taken from and referenced to the Internal Revenue Service, the Securities and Exchange Commission, the National Association of Insurance Commissioners, and other applicable governmental or regulatory agencies. Information shall be presented and used in a manner that is consistent with the rules of those agencies and with rules of the National Association of Securities Dealers. The information shall be offered as a preface to the vendor information required in Section 25101. The preface shall include, but shall not be limited to, the following information:

(a) An explanation of Section 403(b) of the Internal Revenue Code of 1986.

(b) The retirement investment products that may be purchased under Section 403(b) of the Internal Revenue Code of 1986, and with definitions of those products.

(c) Definitions or explanations of all fees referred to in the investment information bank.

25107. A vendor may not charge a fee that is not disclosed.

25108. (a) The actual cost of establishing the vendor registration system and the investment information bank shall be borne equally by registered vendors, based on the total number of registered vendors. Each registered vendor shall pay a one-time establishment fee equal to a pro rata share of the establishment costs charged to vendors that register with the board prior to the close of the initial registration period, as determined by the board. The one-time establishment fee charged to vendors that register with the board after the completion of the initial registration period shall be distributed equally among registered vendors that have paid the establishment fee, and credited toward subsequent maintenance and administrative fees charged to each vendor.

(b) The actual cost of maintaining the vendor registration system and the investment information bank, and the costs associated with publicizing the availability of the investment information bank to local school districts, community college districts, and county offices of education and their employees, shall be borne equally by registered vendors, based on the total number of registered vendors. Each registered vendor shall pay a renewal fee equal to a pro rata share of the maintenance costs, as determined by the board.

(c) Each registered vendor shall pay an administrative fee for each 403(b) product it offers to school employees, which shall represent the actual costs associated with processing the information related to the investment option and presenting it on the investment information bank, as determined by the board.

(d) The board may not divert member services resources or personnel to establish or maintain the registration list.

25109. (a) The board and the system, and its officers and employees, are not responsible for, and may not be held liable for the adequacy of the information provided by the participating vendors contained in the information bank. The information bank maintained by the board serves only to provide information supplied by the participating vendors for the consideration of selection of 403(b) products.

(b) Participating vendors may not utilize the system's logo, or claim or infer any endorsement or recommendation by the board or the system with respect to products and services identified by the vendors in the information bank. At the discretion of the board, a violation of this section may lead to removal from the registry. This restriction does not apply to 403(b) products offered by the board to school employees pursuant to Section 24950.

(c) The board and the system may not be held liable for the actions of other registered vendors.

25110. The board shall complete the initial registration process on or before July 1, 2004.

25111. Each local school district, community college district, and county office of education, in consultation with the exclusive bargaining agent of its employees, if any, may develop a process to ensure that employees are aware of, and have access to, information provided in the impartial investment bank maintained by the board.

25112. Personnel, including elected school officials, acting on behalf of a local school district, community college district, or county office of education may not receive consideration from a vendor in exchange for the promotion of a particular vendor or vendor's products.

25113. A local school district, community college district, or county office of education may not forward annuity or custodial account consideration to the vendor of any unregistered 403(b) product, except insofar as an employee continues making contributions to an unregistered product or products purchased or entered into prior to the implementation date of the impartial investment bank, as established by this chapter.

25114. Employees shall select from registered 403(b) products. Notwithstanding Section 25113, an employee of a local school district, community college district, or county office of education may continue to make contributions to unregistered products purchased or entered into prior to the date of implementation of the impartial investment bank, as established by this chapter.

25115. For purposes of restricting the use of 403(b) investment products provided to employees of local school districts, community college districts, and county offices of education by those vendors and investment products registered with the board pursuant to this chapter, the provisions of Section 770.3 of the Insurance Code do not apply.

CHAPTER 1096

An act to add Section 49415 to the Education Code, relating to pupil health.

[Approved by Governor September 29, 2002. Filed with Secretary of State September 29, 2002.]

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

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

(a) Backpacks of elementary and secondary school pupils often contain textbooks, binders, calculators, personal computers, lunches, a change of clothing, sports equipment, and more.

(b) Elementary and secondary school pupils are carrying backpacks weighing as much as 40 pounds.

(c) Chiropractors, physical therapists, and pediatricians are seeing an increased number of children for spinal column injuries, nontraumatic back pain, and significant postural changes from overloaded backpacks.

(d) Chiropractors and pediatricians recommend that backpacks not exceed more than 15 percent of a pupil's body weight.

(e) In 1999, more than 3,400 pupils between 5 and 14 years of age, inclusive, sought treatment in hospital emergency rooms for injuries related to backpacks or book bags according to the United States Consumer Product Safety Commission.

SEC. 2. Section 49415 is added to the Education Code, to read:

49415. On or before July 1, 2004, the State Board of Education shall adopt maximum weight standards for textbooks used by pupils in elementary and secondary schools. The weight standards shall take into consideration the health risks to pupils who transport textbooks to and from school each day.

CHAPTER 1097

An act to add Section 10426 to the Public Contract Code, and to add Section 352.7 to the Public Utilities Code, relating to contracts.

[Approved by Governor September 29, 2002. Filed with Secretary of State September 29, 2002.]

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

SECTION 1. Section 10426 is added to Public Contract Code, to read:

10426. (a) It shall be unlawful for a person to intentionally disclose proprietary information obtained in the negotiation, execution, or performance of a consulting services contract, as defined in Section 10335.5, or an information technology contract, as defined in Section 11702 of the Government Code, with a state agency when the contracting party knew or should have known that the disclosure was likely to cause harm.

(b) A violation of this section shall be punishable as a misdemeanor and may be prosecuted by the Attorney General or by a local district attorney in the district in which the disclosure took place.

(c) (1) For the purposes of this section ''proprietary information'' shall include any information agreed by the contracting parties to be proprietary or any information that is designated by a contracting state

agency to be proprietary. A contracting state agency shall specifically identify in the contract any information that is considered to be proprietary. The state agency shall make this designation only in cases where the state agency has reason to believe that the release of this information poses an immediate threat to the health, safety, or welfare of the public or the state agency has reason to believe that the contracting party intends to sell the information. If the state agency makes a designation of proprietary information subsequent to the execution of the contract, the state agency shall make a good faith effort to amend the contract to incorporate the subsequent designation of proprietary information. A contracting state agency shall provide written notification to a contracting party of any information that, subsequent to the execution of the contract, is identified to be proprietary. A contracting party is not in violation of this section if that party discloses information prior to the receipt of the written notification.

(2) Any information that is required to be released or disclosed by a contracting party pursuant to a legal requirement, including an order of a court or regulatory agency, shall not be considered a violation of this section.

SEC. 2. Section 352.7 is added to the Public Utilities Code, to read:

352.7. (a) It shall be unlawful for a person to intentionally disclose proprietary information obtained in the negotiation, execution, or performance of a consulting services contract, as defined in Section 10335.5 of the Public Contract Code, or an information technology contract, as defined in Section 11702 of the Government Code, with the Independent System Operator when the contracting party knew or should have known that the disclosure was likely to cause harm.

(b) A violation of this section shall be punishable as a misdemeanor and may be prosecuted by the Attorney General or by a local district attorney in the district in which the disclosure took place.

(c) (1) For the purposes of this section ''proprietary information'' shall include any information agreed by the contracting parties to be proprietary, or any information that is designated by the Independent System Operator to be proprietary. The Independent System Operator shall provide written notification to a contracting party of any information that, subsequent to the execution of the contract, is identified to be proprietary. The Independent System Operator shall make this designation only in cases where the Independent System Operator has reason to believe that the release of this information poses an immediate threat to the health, safety, or welfare of the public or the Independent System Operator has reason to believe that the contracting party intends to sell the information. If the Independent System Operator makes a designation of proprietary information subsequent to the execution of the contract, the Independent System Operator shall make

a good faith effort to amend the contract to incorporate the subsequent designation of proprietary information. The Independent System Operator shall specifically identify in the contract any information that is considered to be proprietary. A contracting party is not in violation of this section if that party discloses information prior to the receipt of the written notification.

(2) Any information that is required to be released or disclosed by a contracting party pursuant to a legal requirement, including an order of a court or regulatory agency, shall not be considered a violation of this section.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

CHAPTER 1098

An act to add Section 3302 to the Labor Code, relating to workers' compensation.

[Approved by Governor September 29, 2002. Filed with Secretary of State September 29, 2002.]

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

SECTION 1. Section 3302 is added to the Labor Code, to read:

3302. (a) (1) When a licensed contractor enters an agreement with a temporary employment agency, employment referral service, labor contractor, or other similar entity for the entity to supply the contractor with an individual to perform acts or contracts for which the contractor's license is required under Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code and the licensed contractor is responsible for supervising the employee's work, the temporary employment agency, employment referral service, labor contractor, or other similar entity shall pay workers' compensation premiums based on the contractor's experience modification rating.

(2) The temporary employment agency, employment referral service, labor contractor, or other similar entity described in paragraph (1) shall report to the insurer both of the following:

(A) Its payroll on a monthly basis in sufficient detail to allow the insurer to determine the number of workers provided and the wages paid to these workers during the period the workers were supplied to the licensed contractor.

(B) The licensed contractor's name, address, and experience modification factor as reported by the licensed contractor.

(C) The workers' compensation classifications associated with the payroll reported pursuant to subparagraph (A). Classifications shall be assigned in accordance with the rules set forth in the California Workers' Compensation Uniform Statistical Reporting Plan published by the Workers' Compensation Insurance Rating Bureau.

(b) The temporary employment agency, employment referral service, labor contractor, or other similar entity supplying the individual under the conditions specified in subdivision (a) shall be solely responsible for the individual's workers' compensation, as specified in subdivision (a).

(c) Nothing in this section is intended to change existing law in effect on December 31, 2002, as it relates to the sole remedy provisions of this division and the special employer provisions of Section 11663 of the Insurance Code.

(d) A licensed contractor that is using a temporary worker supplied pursuant to subdivision (a) shall notify the temporary employment agency, employment referral service, labor contractor, or other similar entity that supplied that temporary worker when either of the following occurs:

(1) The temporary worker is being used on a public works project.

(2) The contractor reassigns a temporary worker to a position other than the classification to which the worker was originally assigned.

(e) A temporary employment agency, employment referral service, labor contractor, or other similar entity may pass through to a licensed contractor any additional costs incurred as a result of this section.

CHAPTER 1099

An act to amend Section 51553 of the Education Code, relating to sex education.

[Approved by Governor September 29, 2002. Filed with Secretary of State September 29, 2002.]

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

SECTION 1. Section 51553 of the Education Code is amended to read:

51553. (a) All public elementary, junior high, and senior high school classes that teach sex education and discuss sexual intercourse shall emphasize that abstinence from sexual intercourse is the only protection that is 100 percent effective against unwanted teenage pregnancy, sexually transmitted diseases, and acquired immune deficiency syndrome (AIDS) when transmitted sexually. All material and instruction in classes that teach sex education and discuss sexual intercourse shall be age appropriate.

(b) All sex education courses that discuss sexual intercourse shall also satisfy the following criteria:

(1) (A) Factual information presented in course material and instruction shall be medically accurate and objective.

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

(i) ''Factual information'' includes, but is not limited to, medical, psychiatric, psychological, empirical, and statistical statements.

(ii) ''Medically accurate'' means verified or supported by research conducted in compliance with scientific methods and published in peer-review journals, where appropriate, and recognized as accurate and objective by professional organizations and agencies with expertise in the relevant field, such as the Centers for Disease Control and Prevention.

(2) Course material and instruction shall stress that abstinence is the only contraceptive method which is 100 percent effective, and that all other methods of contraception carry a risk of failure in preventing unwanted teenage pregnancy. Statistics based on the latest medical information shall be provided to pupils citing the failure and success rates of condoms and other contraceptives in preventing pregnancy.

(3) Course material and instruction shall stress that sexually transmitted diseases are serious possible hazards of sexual intercourse. Pupils shall be provided with statistics based on the latest medical information citing the failure and success rates of condoms in preventing AIDS and other sexually transmitted diseases.

(4) Course material and instruction shall include a discussion of the possible emotional and psychological consequences of preadolescent and adolescent sexual intercourse outside of marriage and the consequences of unwanted adolescent pregnancy.

(5) Course material and instruction shall stress that pupils should abstain from sexual intercourse until they are ready for marriage.

(6) Course material and instruction shall teach honor and respect for monogamous heterosexual marriage.

(7) Course material and instruction shall advise pupils of the laws pertaining to their financial responsibility to children born in and out of wedlock.

(8) Advise pupils of the provisions of Section 1255.7 of the Health and Safety Code and Section 271.5 of the Penal Code, relating to parents and others who voluntarily surrender physical custody of a minor child 72 hours old or younger at a hospital emergency room or other designated location without being subject to prosecution for a violation of certain crimes such as child abandonment. In developing and providing this advice, school districts and public schools may adopt and use for this purpose appropriate information and materials developed by nonprofit organizations with experience in child abandonment. The advice required to be given under this paragraph shall apply only so long as both Section 1255.7 of the Health and Safety Code and Section 271.5 of the Penal Code are in effect.

(9) Course material and instruction shall advise pupils that it is unlawful for males or females of any age to have sexual intercourse with males or females under the age of 18 years to whom they are not married, pursuant to Section 261.5 of the Penal Code.

(10) Course material and instruction shall emphasize that the pupil has the power to control personal behavior. Pupils shall be encouraged to base their actions on reasoning, self-discipline, sense of responsibility, self-control, and ethical considerations, such as respect for oneself and others.

(11) Course material and instruction shall teach pupils to not make unwanted physical and verbal sexual advances, how to say ''no'' to unwanted sexual advances, and shall include information about sexual assault, verbal, physical, and visual, including, but not limited to, nonconsensual sexual advances, nonconsensual physical sexual contact, and rape by an acquaintance, commonly referred to as ''date rape.'' This course material and instruction shall contain methods of preventing sexual assault by an acquaintance, including exercising good judgment and avoiding behavior that impairs good judgment, and shall also encourage youth to resist negative peer pressure. This course material and instruction also shall inform pupils of the potential legal consequences of sexual assault by an acquaintance. Specifically, pupils shall be advised that it is unlawful to touch an intimate part of another person, as specified in subdivision (d) of Section 243.4 of the Penal Code.

(12) Course materials and instruction shall be free of racial, ethnic, and gender biases.

(c) All sex education courses that discuss sexual intercourse shall teach pupils that it is wrong to take advantage of, or to exploit, another person.

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CHAPTER 1100

An act to amend Sections 45103 and 45256 of the Education Code, relating to classified school employees.

[Approved by Governor September 29, 2002. Filed with Secretary of State September 29, 2002.]

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

SECTION 1. It is the intent of the Legislature that, by granting classified service status to employees who serve in part-time playground positions and who also work in the same school district in a classified position, parents and guardians who volunteer in playground positions are not discouraged from volunteering.

SEC. 2. Section 45103 of the Education Code is amended to read:

45103. (a) The governing board of any school district shall employ persons for positions not requiring certification qualifications. The governing board shall, except where Article 6 (commencing with Section 45240) or Section 45318 applies, classify all of these employees and positions. The employees and positions shall be known as the classified service.

(b) (1) Substitute and short-term employees, employed and paid for less than 75 percent of a school year, shall not be a part of the classified service.

(2) Apprentices and professional experts employed on a temporary basis for a specific project, regardless of length of employment, shall not be a part of the classified service.

(3) Full-time students employed part time, and part-time students employed part time in any college workstudy program, or in a work experience education program conducted by a community college district pursuant to Article 7 (commencing with Section 51760) of Chapter 5 of Part 28 and that is financed by state or federal funds, shall not be a part of the classified service.

(4) Part-time playground positions shall not be a part of the classified service, where the employee is not otherwise employed in a classified position. Part-time playground positions shall be considered a part of the classified service when the employee in the position also works in the same school district in a classified position.

(c) As used in this section:

(1) ''Substitute employee'' means any person employed to replace any classified employee who is temporarily absent from duty. In addition, if the district is then engaged in a procedure to hire a permanent employee to fill a vacancy in any classified position, the governing board may fill the vacancy through the employment, for not more than 60

calendar days, of one or more substitute employees, except to the extent that a collective bargaining agreement then in effect provides for a different period of time.

(2) ''Short-term employee'' means any person who is employed to perform a service for the district, upon the completion of which, the service required or similar services will not be extended or needed on a continuing basis.

(3) ''Seventy-five percent of a school year'' means 195 working days, including holidays, sick leave, vacation and other leaves of absence, irrespective of number of hours worked per day.

(d) Employment of either full-time or part-time students in any college workstudy program, or in a work experience education program shall not result in the displacement of classified personnel or impair existing contracts for services.

(e) This section shall apply only to districts not incorporating the merit system as outlined in Article 6 (commencing with Section 45240).

SEC. 2.5. Section 45103 of the Education Code is amended to read:

45103. (a) The governing board of any school district shall employ persons for positions not requiring certification qualifications. The governing board shall, except where Article 6 (commencing with Section 45240) or Section 45318 applies, classify all of these employees and positions. The employees and positions shall be known as the classified service.

(b) (1) Substitute and short-term employees, employed and paid for less than 75 percent of a school year, shall not be a part of the classified service.

(2) Apprentices and professional experts employed on a temporary basis for a specific project, regardless of length of employment, shall not be a part of the classified service.

(3) Full-time students employed part time, and part-time students employed part time in any college workstudy program, or in a work experience education program conducted by a community college district pursuant to Article 7 (commencing with Section 51760) of Chapter 5 of Part 28 and that is financed by state or federal funds, shall not be a part of the classified service.

(4) Part-time playground positions shall not be a part of the classified service, where the employee is not otherwise employed in a classified position. Part-time playground positions shall be considered a part of the classified service when the employee in the position also works in the same school district in a classified position.

(c) Unless otherwise permitted, a person whose position does not require certification qualifications shall not be employed by a governing board, except as authorized by this section.

(d) As used in this section:

(1) ''Substitute employee'' means any person employed to replace any classified employee who is temporarily absent from duty. In addition, if the district is then engaged in a procedure to hire a permanent employee to fill a vacancy in any classified position, the governing board may fill the vacancy through the employment, for not more than 60 calendar days, of one or more substitute employees, except to the extent that a collective bargaining agreement then in effect provides for a different period of time.

(2) ''Short-term employee'' means any person who is employed to perform a service for the district, upon the completion of which, the service required or similar services will not be extended or needed on a continuing basis. Before employing a short-term employee, the governing board, at a regularly scheduled board meeting, shall specify the service required to be performed by the employee pursuant to the definition of ''classification'' in subdivision (a) of Section 45101, and shall certify the ending date of the service. The ending date may be shortened or extended by the governing board, but shall not extend beyond 75 percent of a school year.

(3) ''Seventy-five percent of a school year'' means 195 working days, including holidays, sick leave, vacation and other leaves of absence, irrespective of number of hours worked per day.

(e) Employment of either full-time or part-time students in any college workstudy program, or in a work experience education program shall not result in the displacement of classified personnel or impair existing contracts for services.

(f) This section shall apply only to districts not incorporating the merit system as outlined in Article 6 (commencing with Section 45240).

SEC. 3. Section 45256 of the Education Code is amended to read:

45256. (a) The commission shall classify all employees and positions within the jurisdiction of the governing board or of the commission, except those that are exempt from the classified service, as specified in subdivision (b). The employees and positions shall be known as the classified service. ''To classify'' shall include, but not be limited to, allocating positions to appropriate classes, arranging classes into occupational hierarchies, determining reasonable relationships within occupational hierarchies, and preparing written class specifications.

(b) All of the following are exempt from the classified service:

(1) Positions which require certification qualifications.

(2) Full-time students employed part time.

(3) Part-time students employed part time in any college workstudy program, or in a work experience education program conducted by a community college district pursuant to Article 7 (commencing with

Section 51760) of Chapter 5 of Part 28 and that is financed by state or federal funds.

(4) Apprentice positions.

(5) Positions established for the employment of professional experts on a temporary basis for a specific project by the governing board or by the commission when so designated by the commission.

(6) Part-time playground positions, where the employee is not otherwise employed in a classified position. Part-time playground positions shall be considered part of the classified service when the employee in the position also works in the same school district in a classified position.

(c) (1) Employment of either full-time or part-time students in any college workstudy program, or in a work experience education program shall not result in the displacement of classified personnel or impair existing contracts for services.

(2) Nothing in this section shall prevent an employee, who has attained regular status in a full-time position, from taking a voluntary reduction in time and retaining his or her regular status under the provisions of this law.

(d) No person whose contribution consists solely in the rendition of individual personal services and whose employment does not come within the scope of the exceptions listed above shall be employed outside the classified service.

(e) A part-time position is one for which the assigned time, when computed on an hourly, daily, weekly, or monthly basis, is less than $87\frac{1}{2}$ percent of the normally assigned time of the majority of employees in the classified service.

SEC. 4. A school district shall not reduce the hours of, or terminate, as a result of the implementation of this act, a classified employee who was assigned to a part-time playground position.

SEC. 5. Section 2.5 of this bill incorporates amendments to Section 45103 of the Education Code proposed by both this bill and AB 500. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2003, (2) each bill amends Section 45103 of the Education Code, and (3) this bill is enacted after AB 500, in which case Section 2 of this bill shall not become operative.

CHAPTER 1101

An act to add Section 1284.3 to the Code of Civil Procedure, relating to arbitration.

[Approved by Governor September 29, 2002. Filed with
Secretary of State September 29, 2002.]

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

SECTION 1. Section 1284.3 is added to the Code of Civil Procedure, to read:

1284.3. (a) No neutral arbitrator or private arbitration company shall administer a consumer arbitration under any agreement or rule requiring that a consumer who is a party to the arbitration pay the fees and costs incurred by an opposing party if the consumer does not prevail in the arbitration, including, but not limited to, the fees and costs of the arbitrator, provider organization, attorney, or witnesses.

(b) (1) All fees and costs charged to or assessed upon a consumer party by a private arbitration company in a consumer arbitration, exclusive of arbitrator fees, shall be waived for an indigent consumer. For the purposes of this section, ''indigent consumer'' means a person having a gross monthly income that is less than 300 percent of the federal poverty guidelines. Nothing in this section shall affect the ability of a private arbitration company to shift fees that would otherwise be charged or assessed upon a consumer party to a nonconsumer party.

(2) Prior to requesting or obtaining any fee, a private arbitration company shall provide written notice of the right to obtain a waiver of fees to a consumer or prospective consumer in a manner calculated to bring the matter to the attention of a reasonable consumer, including, but not limited to, prominently placing a notice in its first written communication to the consumer and in any invoice, bill, submission form, fee schedule, rules, or code of procedure.

(3) Any consumer requesting a waiver of fees or costs may establish his or her eligibility by making a declaration under oath on a form provided to the consumer by the private arbitration company for signature stating his or her monthly income and the number of persons living in his or her household. No private arbitration company may require a consumer to provide any further statement or evidence of indigence.

(4) Any information obtained by a private arbitration company about a consumer's identity, financial condition, income, wealth, or fee waiver request shall be kept confidential and may not be disclosed to any adverse party or any nonparty to the arbitration, except a private arbitration company may not keep confidential the number of waiver requests received or granted, or the total amount of fees waived.

(c) This section applies to all consumer arbitration agreements subject to this article, and to all consumer arbitration proceedings conducted in California.

CHAPTER 1102

An act to amend Section 11135 of the Government Code, to amend Sections 19050 and 19050.5 of, to add Section 19054 to, and to add Chapter 3 (commencing with Section 19095) to Part 1 of Division 10 of, the Welfare and Institutions Code, relating to human services.

[Approved by Governor September 29, 2002. Filed with Secretary of State September 29, 2002.]

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 70 percent of employable blind and visually impaired individuals are unemployed.

(2) Due to the lack of employment, most of these individuals receive public assistance payments, as well as Medi-Cal and other public benefits, thereby costing the state millions of dollars in benefit payments and lost income tax revenue.

(3) It is the primary function of the Department of Rehabilitation to prepare and place persons with disabilities, including the blind and visually impaired, in meaningful jobs.

(4) The department needs to implement policy and procedural changes in order to improve its ability to increase the numbers of blind and visually impaired consumers placed in competitive employment.

(5) The blind and visually impaired have a long history of success with separate specialized training that takes into account their unique needs and the need to have experienced, trained staff, and contracting organizations.

(6) The establishment of a Division of Services for the Blind and Visually Impaired and the Deaf and Hard of Hearing in the Department of Rehabilitation will, through the focus of state and federal resources and without diverting resources that would otherwise be used to assist those with other disabilities, dramatically improve employment-related services provided to persons who are blind or visually impaired or deaf or hard of hearing.

(7) The purpose of the establishment of a Division of Services for the Blind and Visually Impaired and the Deaf and Hard of Hearing in the department is to streamline, and make more efficient and effective, the department's delivery of services to Californians who are blind or visually impaired, and that this streamlined organization of those services into a single division within the department will result in no greater than minor, absorbable costs, if any.

(b) It is, therefore, the intent of the Legislature to establish a Division of Services for the Blind and Visually Impaired and the Deaf and Hard of Hearing to improve the lives of blind and visually impaired and deaf and hard of hearing persons.

SEC. 2. 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.

(d) (1) The Legislature finds and declares that the ability to utilize electronic or information technology is often an essential function for successful employment in the current work world.

(2) In order to improve accessibility of existing technology, and therefore increase the successful employment of individuals with disabilities, particularly blind and visually impaired and deaf and hard-of-hearing persons, state governmental entities, in developing, procuring, maintaining, or using electronic or information technology, either indirectly or through the use of state funds by other entities, shall comply with the accessibility requirements of Section 508 of the Rehabilitation Act of 1973, as amended (29 U.S.C. Sec. 794d), and regulations implementing that act as set forth in Part 1194 of Title 36 of the Federal Code of Regulations.

(3) Any entity that contracts with a state or local entity subject to this section for the provision of electronic or information technology or for the provision of related services shall agree to respond to, and resolve any complaint regarding accessibility of its products or services that is brought to the attention of the entity.

SEC. 2.5. Section 11135 of the Government Code is amended to read:

11135. (a) No person in the State of California shall, on the basis of race, national origin, 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.

(d) (1) The Legislature finds and declares that the ability to utilize electronic or information technology is often an essential function for successful employment in the current work world.

(2) In order to improve accessibility of existing technology, and therefore increase the successful employment of individuals with disabilities, particularly blind and visually impaired and deaf and hard-of-hearing persons, state governmental entities, in developing, procuring, maintaining, or using electronic or information technology, either indirectly or through the use of state funds by other entities, shall comply with the accessibility requirements of Section 508 of the Rehabilitation Act of 1973, as amended (29 U.S.C. Sec. 794d), and regulations implementing that act as set forth in Part 1194 of Title 36 of the Federal Code of Regulations.

(3) Any entity that contracts with a state or local entity subject to this section for the provision of electronic or information technology or for the provision of related services shall agree to respond to, and resolve any complaint regarding accessibility of its products or services that is brought to the attention of the entity.

SEC. 3. Section 19050 of the Welfare and Institutions Code is amended to read:

19050. There is in the department a program manager for the blind and visually impaired and a program manager for the deaf and hard of hearing. The program managers shall, as determined by the director, report to the deputy director of the division established pursuant to Section 19095, and shall assist in the development and coordination of policy with respect to programs for persons who are blind and visually impaired and persons who are deaf and hard of hearing.

SEC. 4. Section 19050.5 of the Welfare and Institutions Code is amended to read:

19050.5. The program manager for the blind and visually impaired programs and the program manager for the deaf and hard-of-hearing programs shall have demonstrated experience and sensitivity in working with these disabilities.

SEC. 5. Section 19054 is added to the Welfare and Institutions Code, to read:

19054. The director shall appoint a Deaf Advisory Committee to advise the director on means to increase employment, enlarge economic opportunities, enhance independence and self-sufficiency, and otherwise improve services to persons who are deaf or hard of hearing. A majority of the committee members shall be deaf or hard of hearing, and other members shall have experience relating to services to the deaf or hard of hearing. The committee shall develop, in conjunction with stakeholders, an annual work plan to identify and address areas for improvement in services provided by the department to persons who are deaf or hard of hearing.

SEC. 6. Chapter 3 (commencing with Section 19095) is added to Part 1 of Division 10 of the Welfare and Institutions Code, to read:

CHAPTER 3. DIVISION OF SERVICES FOR THE BLIND AND VISUALLY IMPAIRED AND THE DEAF AND HARD OF HEARING

19095. (a) (1) There is hereby established in the Department of Rehabilitation a Division of Specialized Services for the Blind and Visually Impaired and the Deaf and Hard of Hearing.

(2) For purposes of this chapter ''division'' means the division established pursuant to paragraph (1).

(b) The purposes of the division shall be as follows:

(1) To assist persons who are blind and visually impaired and deaf and hard of hearing in gaining competitive employment.

(2) To enlarge economic opportunities for persons who are blind or visually impaired and deaf and hard of hearing.

(3) To enhance the independence and self-sufficiency of blind and visually impaired and deaf and hard-of-hearing persons.

19095.5. (a) The division shall be under the direction of a deputy director, who shall be appointed by the Governor.

(b) The deputy director shall have extensive background in, or knowledge of, services to the blind and visually impaired and the deaf and hard of hearing.

(c) The deputy director shall report directly to the directorate of the Department of Rehabilitation and shall be a member of the department's executive management, taking part in all departmental planning and decisionmaking.

19096. (a) Commencing July 1, 2003, the division shall be charged with the administration of the following programs and services:

(1) All staff within the division, including rehabilitation counselors, rehabilitation counselors for the blind, staff of the orientation center, and staff of the business enterprises program.

(2) Orientation centers for the blind, provided for pursuant to Article 1 (commencing with Section 19500) of Chapter 6 of Part 2.

(3) The Business Enterprise Program for the Blind, provided pursuant to Article 5 (commencing with Section 19625) of Chapter 6 of Part 2.

(4) Contracts for services with organizations serving the blind and visually impaired and the deaf and hard of hearing.

(5) Programs for the blind under Subchapter 7 (commencing with Section 796) of Chapter 16 of Title 29 of the United States Code.

(b) The division shall also provide additional rehabilitation services to its blind and visually impaired and deaf and hard-of-hearing clients, to the extent that funds are available.

(c) The program managers shall report to the deputy director of the division established pursuant to this chapter.

(d) The division shall be responsible for administrative functions, including, but not limited to, the following:

(1) Develop, implement, and oversee policies related to blind and visually impaired and deaf and hard-of-hearing consumers, including timely provision of assistive technology services.

(2) Develop and implement mandatory orientation training programs for new rehabilitation counselors for the blind, rehabilitation counselors for the deaf, and counselor teachers.

(3) Develop and implement ongoing mandatory training for rehabilitation supervisors of blind-designated units.

(4) Establish minimum professional competencies for rehabilitation counselors for the blind, rehabilitation counselors for the deaf, and counselor teachers, and provide continuing in-service education to rehabilitation counselors for the blind, rehabilitation counselors for the deaf, and counselor teachers.

(5) Provide support and assistance to field staff on issues related to the cases of blind and visually impaired and deaf and hard-of-hearing consumers.

(6) Provide technical assistance to the department related to the assistive technology needs of blind and visually impaired and deaf and hard-of-hearing employees and consumers.

(7) Establish and maintain within the department's Internet Web site, a communications system for staff serving blind and visually impaired and deaf and hard-of-hearing consumers for the purpose of sharing resource information, effective practices, and problem solving.

(e) Any program administered in whole or in part by the State Department of Education relative to the transition from school to work for blind and visually impaired and deaf and hard-of-hearing secondary education students shall be conducted in partnership with the division.

19097. (a) Subject to the control of the director, all employees of the department providing services to persons who are blind and visually impaired administered by the division pursuant to this chapter shall be under the exclusive direction and supervision of the deputy director of the division.

(b) The division shall establish criteria and train counselors and supervisors working with persons who are blind and visually impaired and deaf and hard of hearing to ensure they have the specialized knowledge and skills to meet the needs of these persons.

19097.5. The department shall report annually in the fourth quarter of each calendar year to the Blind Advisory Committee on the amount of state and federal funds allocated to direct services governed by this chapter.

19098. The Director of Rehabilitation shall, on or before July 1, 2005, and every other year thereafter, report to the Legislature and the Governor on the programs administered by the division. The report shall include statistics on competitive employment placements of persons who are blind or visually impaired.

19098.5. The Director of Rehabilitation shall establish the Blind Advisory Committee to advise the Director of Rehabilitation on means to increase competitive employment, enlarge economic opportunities, enhance independence and self-sufficiency, and otherwise improve services for persons who are blind and visually impaired. A majority of the members shall be blind or visually impaired. Members of the committee who are not blind or visually impaired shall have experience in services to the blind. The committee shall develop, in conjunction with stakeholders, an annual work plan to identify and address areas for improvement in services provided by the division to persons who are blind and visually impaired.

SEC. 7. Section 2.5 of this bill incorporates amendments to Section 11135 of the Government Code proposed by both this bill and AB 3035. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2003, (2) each bill amends Section 11135 of the Government Code, and (3) this bill is enacted after AB 3035, in which case Section 2 of this bill shall not become operative.

CHAPTER 1103

An act relating to water, and making an appropriation therefor.

[Approved by Governor September 29, 2002. Filed with Secretary of State September 29, 2002.]

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

SECTION 1. (a) Of the funds made available pursuant to subdivision (a) of Section 79162 of the Water Code, the sum of two million one hundred thousand dollars ($2,100,000) is hereby appropriated to the Department of Water Resources, of which amount 50 percent shall be allocated to the Tulare County Water Works District No. 1 and 50 percent shall be allocated to the Alpaugh Irrigation District, for the purposes of working cooperatively on feasibility studies, or on the design, repair, replacement, or construction of the domestic water supply and treatment systems and ancillary facilities operated and maintained by those districts.

(b) Of the funds made available pursuant to subdivision (b) of Section 79162 of the Water Code, the sum of one million dollars ($1,000,000) is hereby appropriated to the Department of Water Resources, for allocation to Madera County for the appraisal, acquisition, design, repair, replacement, or construction of the domestic water supply and treatment systems for the Oakhurst area.

(c) Funds shall only be allocated to a district pursuant to this section if that district meets the following criteria:

(1) The district submits a feasibility study to the department regarding the proposed project.

(2) The department determines that the project described in the report prepared pursuant to paragraph (1) is feasible.

CHAPTER 1104

An act to amend Section 30353 of the Public Resources Code, relating to local coastal programs.

[Approved by Governor September 29, 2002. Filed with Secretary of State September 29, 2002.]

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

SECTION 1. Section 30353 of the Public Resources Code is amended to read:

30353. Payment for costs claimed pursuant to this article shall be made only for costs which, but for the operation of a certified local coastal program, would not have been incurred by the claimant local government and if the following criteria are met:

(a) Costs for establishing a regulatory program to implement a certified local coastal program, including costs for the preparation and printing of public information materials, application forms, establishing new procedures, and staff training are payable. The costs specified in this subdivision include initial startup costs incurred over a period not to exceed one year from the date a certified local coastal program has been adopted for implementation by the appropriate local government.

(b) A fixed payment not to exceed ten dollars ($10) per permit application for any development subject to a certified local coastal program may be claimed and paid. The payment specified in this subdivision is intended to cover general costs, including costs for public notice, notice and submittal of files to the commission, and appearances before the commission.

(c) Other costs of processing and reviewing coastal development permits pursuant to a certified local coastal program shall normally not be eligible for reimbursement because these types of activities should either be incorporated within the routine regulatory process of the local government or, at the discretion of the local government, be paid for from reasonable permit fees. A local government may, however, request payment for increased regulatory costs if it can show that either or both of the following special circumstances apply within its jurisdiction:

(1) In jurisdictions with a population of less than 10,000, the existing regulatory program of the local government is not capable of processing and reviewing additional coastal development permits pursuant to a certified local coastal program and where the increased costs could not reasonably be expected to be covered by permit fees.

(2) The regulatory program included in a certified local coastal program requires the discharge of resource management functions that exceed the level of regulatory review normally required or undertaken by the local government.

(d) Costs for enforcement of regulatory requirements that are directly related to local coastal program implementation, such as ensuring compliance with coastal development permit terms and conditions, are payable, if the enforcement activities are not of a type routinely undertaken or of a type required by law as part of the affected local government's normal regulatory responsibilities.

(e) Litigation costs which, but for the operation of a certified local coastal program, would not have been incurred may be paid. Where an action is brought against a local government and the action states as a principal cause of action the operation of the local government's local

coastal program and the local government prevails in the action, litigation costs may be paid to the extent the costs are not assessed against the party bringing the action. Where the local government loses the action primarily on grounds it has failed to properly carry out its certified local coastal program, litigation costs shall not be paid. In accordance with procedures established by the executive director of the commission in consultation with the Attorney General, litigation costs may be paid prior to the rendering of a final judgment in the action, if the Attorney General has intervened in the action in support of the local government's position, the amount paid does not exceed five hundred thousand dollars ($500,000), and the amount paid is equal to or greater than 5 percent of the local government's general revenues as published in the most recent version of ''Cities Annual Report'' by the Controller. The local government shall reimburse the state from any costs recovered after a final judgment is rendered in the action.

(f) If additional planning is required by the commission as a condition of its certification of any local coastal program, costs for the additional planning are payable.

CHAPTER 1105

An act to amend Section 1417.9 of, and to add Sections 1054.9 and 1473.6 to, the Penal Code, relating to criminal procedure.

[Approved by Governor September 29, 2002. Filed with Secretary of State September 29, 2002.]

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

SECTION 1. Section 1054.9 is added to the Penal Code, to read:

1054.9. (a) Upon the prosecution of a postconviction writ of habeas corpus or a motion to vacate a judgment in a case in which a sentence of death or of life in prison without the possibility of parole has been imposed, and on a showing that good faith efforts to obtain discovery materials from trial counsel were made and were unsuccessful, the court shall, except as provided in subdivision (c), order that the defendant be provided reasonable access to any of the materials described in subdivision (b).

(b) For purposes of this section, ''discovery materials'' means materials in the possession of the prosecution and law enforcement authorities to which the same defendant would have been entitled at time of trial.

(c) In response to a writ or motion satisfying the conditions in subdivision (a), court may order that the defendant be provided access to physical evidence for the purpose of examination, including, but not limited to, any physical evidence relating to the investigation, arrest, and prosecution of the defendant only upon a showing that there is good cause to believe that access to physical evidence is reasonably necessary to the defendant's effort to obtain relief. The procedures for obtaining access to physical evidence for purposes of postconviction DNA testing are provided in Section 1405, and nothing in this section shall provide an alternative means of access to physical evidence for those purposes.

(d) The actual costs of examination or copying pursuant to this section shall be borne or reimbursed by the defendant.

SEC. 2. Section 1417.9 of the Penal Code is amended to read:

1417.9. (a) Notwithstanding any other provision of law and subject to subdivision (b), the appropriate governmental entity shall retain all biological material that is secured in connection with a criminal case for the period of time that any person remains incarcerated in connection with that case. The governmental entity shall have the discretion to determine how the evidence is retained pursuant to this section, provided that the evidence is retained in a condition suitable for deoxyribonucleic acid (DNA) testing.

(b) A governmental entity may dispose of biological material before the expiration of the period of time described in subdivision (a) if all of the conditions set forth below are met:

(1) The governmental entity notifies all of the following persons of the provisions of this section and of the intention of the governmental entity to dispose of the material: any person, who as a result of a felony conviction in the case is currently serving a term of imprisonment and who remains incarcerated in connection with the case, any counsel of record, the public defender in the county of conviction, the district attorney in the county of conviction, and the Attorney General.

(2) The notifying entity does not receive, within 90 days of sending the notification, any of the following:

(A) A motion filed pursuant to Section 1405. However, upon filing of that motion, the governmental entity shall retain the material only until the time that the court's denial of the motion is final.

(B) A request under penalty of perjury that the material not be destroyed or disposed of because the declarant will file within 180 days a motion for DNA testing pursuant to Section 1405 that is followed within 180 days by a motion for DNA testing pursuant to Section 1405, unless a request for an extension is requested by the convicted person and agreed to by the governmental entity in possession of the evidence.

(C) A declaration of innocence under penalty of perjury that has been filed with the court within 180 days of the judgment of conviction or July

1, 2001, whichever is later. However, the court shall permit the destruction of the evidence upon a showing that the declaration is false or there is no issue of identity that would be affected by additional testing. The convicted person may be cross-examined on the declaration at any hearing conducted under this section or on an application by or on behalf of the convicted person filed pursuant to Section 1405.

(3) No other provision of law requires that biological evidence be preserved or retained.

(c) Notwithstanding any other provision of law, the right to receive notice pursuant to this section is absolute and shall not be waived. This prohibition applies to, but is not limited to, a waiver that is given as part of an agreement resulting in a plea of guilty or nolo contendre.

SEC. 3. Section 1473.6 is added to the Penal Code, to read:

1473.6. (a) Any person no longer unlawfully imprisoned or restrained may prosecute a motion to vacate a judgment for any of the following reasons:

(1) Newly discovered evidence of fraud by a government official that completely undermines the prosecution's case, is conclusive, and points unerringly to his or her innocence.

(2) Newly discovered evidence that a government official testified falsely at the trial that resulted in the conviction and that the testimony of the government official was substantially probative on the issue of guilt or punishment.

(3) Newly discovered evidence of misconduct by a government official committed in the underlying case that resulted in fabrication of evidence that was substantially material and probative on the issue of guilt or punishment. Evidence of misconduct in other cases is not sufficient to warrant relief under this paragraph.

(b) For purposes of this section, ''newly discovered evidence'' is evidence that could not have been discovered with reasonable diligence prior to judgment.

(c) The procedure for bringing and adjudicating a motion under this section, including the burden of producing evidence and the burden of proof, shall be the same as for prosecuting a writ of habeas corpus.

(d) A motion pursuant to this section must be filed within one year of the later of the following:

(1) The date the moving party discovered, or could have discovered with the exercise of due diligence, additional evidence of the misconduct or fraud by a government official beyond the moving party's personal knowledge.

(2) The effective date of this section.

SEC. 4. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school

districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

CHAPTER 1106

An act to add Article 6.3 (commencing with Section 8592.9) to Chapter 7 of Division 1 of Title 2 of the Government Code, to amend Section 12305 of the Penal Code, and to amend Section 7 of Assembly Bill 2580, relating to public safety.

[Approved by Governor September 29, 2002. Filed with Secretary of State September 29, 2002.]

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

SECTION 1. Article 6.3 (commencing with Section 8592.9) is added to Chapter 7 of Division 1 of Title 2 of the Government Code, to read:

Article 6.3. Public Safety Communications Equipment

8592.9. (a) Of the funds received from the federal government for homeland security and appropriated in the Budget Act of 2002, not more than fifteen million dollars ($15,000,000) may be allocated to the security advisor to the Governor for disbursement to state and local government public safety agencies to procure and operate radio equipment that will provide interoperability among state, local, and federal public radio systems. This interoperable radio equipment shall meet the public safety digital communications standards in Suite 102 of the American National Standards Institute and the Telecommunications Information Association.

(b) Each state and local government public safety agency that receives funds pursuant to this section shall report to the Legislature on its progress in implementing this section by January 1 of each year, beginning in 2004, and until all of the funds disbursed pursuant to this section have been expended.

(c) This section shall not be construed to preempt or supercede the development and implementation of public radio communications systems by local governments.

SEC. 2. Section 12305 of the Penal Code is amended to read:

12305. (a) Every dealer, manufacturer, importer, and exporter of any destructive device, or any motion picture or television studio using destructive devices in the conduct of its business, shall obtain a permit for the conduct of that business from the Department of Justice.

(b) Any person, firm, or corporation not mentioned in subdivision (a) shall obtain a permit from the Department of Justice in order to possess or transport any destructive device. No permit shall be issued to any person who meets any of the following criteria:

(1) Has been convicted of any felony.

(2) Is addicted to the use of any narcotic drug.

(3) Is a person in a class prohibited by Section 8100 or 8103 of the Welfare and Institutions Code or Section 12021 or 12021.1 of this code.

(c) Applications for permits shall be filed in writing, signed by the applicant if an individual, or by a member or officer qualified to sign if the applicant is a firm or corporation, and shall state the name, business in which engaged, business address and a full description of the use to which the destructive devices are to be put.

(d) Applications and permits shall be uniform throughout the state on forms prescribed by the Department of Justice.

(e) Each applicant for a permit shall pay at the time of filing his or her application a fee not to exceed the application processing costs of the Department of Justice. A permit granted pursuant to this article may be renewed one year from the date of issuance, and annually thereafter, upon the filing of a renewal application and the payment of a permit renewal fee not to exceed the application processing costs of the Department of Justice. After the department establishes fees sufficient in amount to cover processing costs, the amount of the fees shall only increase at a rate not to exceed the legislatively approved cost-of-living adjustment for the department.

(f) Except as provided in subdivision (g), the Department of Justice shall, for every person, firm, or corporation to whom a permit is issued pursuant to this article, annually conduct an inspection for security and safe storage purposes, and to reconcile the inventory of destructive devices.

(g) A person, firm, or corporation with an inventory of fewer than five devices that require any Department of Justice permit shall be subject to an inspection for security and safe storage purposes, and to reconcile inventory, once every five years, or more frequently if determined by the department.

(h) Subdivisions (f) and (g) shall not apply to individuals possessing an assault weapon pursuant to a permit issued by the Department of Justice for noncommercial purposes.

SEC. 3. Section 7 of Assembly Bill 2580 is amended to read:

SEC. 7. The Department of Justice shall establish a schedule of fees to cover the costs of the inspection duties imposed on the department by this act. The fees shall be equitable and shall not exceed the costs of providing the required inspections. The duties imposed on the department by this act are to be funded through inspection fees and, as may be necessary, until January 1, 2006, from the Dealers' Record of Sale Special Account, unless a later enacted statute, that becomes operative on or before January 1, 2006, deletes or extends that date.

SEC. 4. Sections 2 and 3 of this act shall only become operative if Assembly Bill 2580 is enacted and becomes effective on or before January 1, 2003, and this act is enacted after Assembly Bill 2580.

CHAPTER 1107

An act to add Section 234 to the Labor Code, relating to wages.

[Approved by Governor September 29, 2002. Filed with Secretary of State September 29, 2002.]

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

SECTION 1. Section 234 is added to the Labor Code, to read:

234. An employer absence control policy that counts sick leave taken pursuant to Section 233 as an absence that may lead to or result in discipline, discharge, demotion, or suspension is a per se violation of Section 233. An employee working under this policy is entitled to appropriate legal and equitable relief pursuant to Section 233.

CHAPTER 1108

An act to add Section 24473 to the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

[Approved by Governor September 29, 2002. Filed with Secretary of State September 29, 2002.]

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

SECTION 1. Section 24473 is added to the Revenue and Taxation Code, to read:

24473. Notwithstanding any other provision of law, the contribution or other transfer of the assets of a mutual water company

established prior to September 26, 1977, that is tax exempt under Section 501(c)(12) of the Internal Revenue Code, but is a taxable entity under California Law, including its lands, easements, rights, and obligations to act as sole agent of the stockholders in exercising the riparian rights of the stockholders, and rights relating to the ownership, operation, and maintenance of a water system and facilities serving the customers of the company, to a community services district formed pursuant to Part 1 (commencing with Section 61100) of Division 3 of Title 6 of the Government Code, is not a transfer subject to taxes imposed by this part if all of the following requirements are met:

(a) The consideration for the transfer of all or substantially all of the assets is the assumption by the district of the company's liability to provide service to the company's stockholders.

(b) The legal or beneficial title to all or substantially all of the company's assets is vested in the district on or before January 1, 2008.

(c) For the one-year period immediately prior to commencement of the transfer and continuing until the transfer is completed, 85 percent or more of the company's income consists of amounts collected from stockholders for the sole purpose of meeting losses and expenses.

SEC. 2. This act provides for a tax levy within the meaning of Article IV of the Constitution and shall go into immediate effect.

CHAPTER 1109

An act to amend Sections 65041.1, 66418, 66418.2, 66478.4, 66478.5, 66478.6, 66478.8, 66478.11, 66478.12, and 66499.35 of the Government Code, and to amend Section 71111 of the Public Resources Code, relating to land use.

[Approved by Governor September 29, 2002. Filed with Secretary of State September 29, 2002.]

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

SECTION 1. Section 65041.1 of the Government Code, as added by Section 4 of Assembly Bill 857 of the 2001–02 Regular Session, is amended to read:

65041.1. The state planning priorities, which are intended to promote equity, strengthen the economy, protect the environment, and promote public health and safety in the state, including in urban, suburban, and rural communities, shall be as follows:

(a) To promote infill development and equity by rehabilitating, maintaining, and improving existing infrastructure that supports infill

development and appropriate reuse and redevelopment of previously developed, underutilized land that is presently served by transit, streets, water, sewer, and other essential services, particularly in underserved areas, and to preserving cultural and historic resources.

(b) To protect environmental and agricultural resources by protecting, preserving, and enhancing the state's most valuable natural resources, including working landscapes such as farm, range, and forest lands, natural lands such as wetlands, watersheds, wildlife habitats, and other wildlands, recreation lands such as parks, trails, greenbelts, and other open space, and landscapes with locally unique features and areas identified by the state as deserving special protection.

(c) To encourage efficient development patterns by ensuring that any infrastructure associated with development, other than infill development, supports new development that does all of the following:

(1) Uses land efficiently.

(2) Is built adjacent to existing developed areas to the extent consistent with the priorities specified pursuant to subdivision (b).

(3) Is located in an area appropriately planned for growth.

(4) Is served by adequate transportation and other essential utilities and services.

(5) Minimizes ongoing costs to taxpayers.

SEC. 1.1. Nothing in Section 65041.1 of the Government Code is intended or shall be construed to affect the implementation of the CALFED Bay-Delta Program.

SEC. 1.2. Sections 1 and 1.1 of this act shall become operative only if Section 65041.1 is added to the Government Code by the enactment of AB 857 and becomes effective on or before January 1, 2003.

SEC. 1.3. Section 66418 of the Government Code is amended to read:

66418. ''Design'' means: (1) street alignments, grades and widths; (2) drainage and sanitary facilities and utilities, including alignments and grades thereof; (3) location and size of all required easements and rights-of-way; (4) fire roads and firebreaks; (5) lot size and configuration; (6) traffic access; (7) grading; (8) land to be dedicated for park or recreational purposes; and (9) other specific physical requirements in the plan and configuration of the entire subdivision that are necessary to ensure consistency with, or implementation of, the general plan or any applicable specific plan as required pursuant to Section 66473.5.

SEC. 1.5. Section 66418.2 of the Government Code is amended to read:

66418.2. (a) ''Environmental subdivision'' means a subdivision of land pursuant to this division for biotic and wildlife purposes that meets all of the conditions specified in subdivision (b).

(b) Prior to approving or conditionally approving an environmental subdivision, the local agency shall find each of the following:

(1) That factual biotic or wildlife data, or both, are or will be available to the local agency approving the environmental subdivision to support the application for approval.

(2) That provisions have been made for the perpetual maintenance of the property as a biotic or wildlife habitat, or both, in accordance with the conditions specified by any local, state, or federal agency requiring mitigation.

(3) That an easement will be recorded in the county in which the land is located to ensure compliance with the conditions specified by any local, state, or federal agency requiring the mitigation. The easement shall contain a covenant with a county, city, or nonprofit organization running with the land in perpetuity, that the landowner shall not construct or permit the construction of improvements except those for which the right is expressly reserved in the instrument. This reservation shall not be inconsistent with the purposes of this section and shall not be incompatible with maintaining and preserving the biotic or wildlife character, or both, of the land.

(4) The real property is at least 20 acres in size, or it is less than 20 acres in size, but is contiguous to other land that would also qualify as an environmental subdivision and the total combined acreage would be 20 acres or more.

(c) Notwithstanding subdivision (a) of Section 66411.1, any improvement, dedication, or design required by the local agency as a condition of approval of an environmental subdivision shall be solely for the purposes of ensuring compliance with the conditions required by the local, state, or federal agency requiring the mitigation.

(d) After recordation of an environmental subdivision, a subdivider may only abandon an environmental subdivision by reversion to acreage pursuant to Chapter 6 (commencing with Section 66499.11) if the local agency finds that all of the following conditions exist:

(1) None of the parcels created by the environmental subdivision has been sold or exchanged.

(2) None of the parcels is being used, set aside, or required for mitigation purposes pursuant to this section.

(3) Upon abandonment and reversion to acreage pursuant to this subdivision, the easement for biotic and wildlife purposes is extinguished.

(e) If the environmental subdivision is abandoned and reverts to acreage pursuant to subdivision (d), all local, state, and federal requirements shall apply.

(f) This section shall apply only upon the written request of the landowner at the time the land is divided. This section is not intended

to limit or preclude subdivision by other lawful means for the mitigation of impacts to the environment, or of the land devoted to these purposes, or to require the division of land for these purposes.

(g) Notwithstanding any other provision of law, no legislative body shall approve or conditionally approve a subdivision pursuant to this section on or after January 1, 2005.

SEC. 2. Section 66478.4 of the Government Code is amended to read:

66478.4. (a) No local agency shall approve either a tentative or a final map of any proposed subdivision to be fronted upon a public waterway, river, or stream which does not provide, or have available, reasonable public access by fee or easement from a public highway to that portion of the bank of the river or stream bordering or lying within the proposed subdivision.

(b) Reasonable public access shall be determined by the local agency in which the proposed subdivision is to be located. In making the determination of what shall be reasonable access, the local agency shall consider all of the following:

(1) That access may be by highway, foot trail, bike trail, horse trail, or any other means of travel.

(2) The size of the subdivision.

(3) The type of riverbank and the various appropriate recreational, educational, and scientific uses, including, but not limited to, swimming, diving, boating, fishing, water skiing, scientific collection, and teaching.

(4) The likelihood of trespass on private property and reasonable means of avoiding these trespasses.

(c) A public waterway, river, or stream for the purposes of Sections 66477.2, 66478.4, 66478.5 and 66478.6 means those waterways, rivers and streams defined in Sections 100 through 106 of the Harbors and Navigation Code, any stream declared to be a public highway for fishing pursuant to Sections 25660 through 25662 of the Government Code, the rivers listed in Section 1505 of the Fish and Game Code as spawning areas, all waterways, rivers and streams downstream from any state or federal salmon or steelhead fish hatcheries.

SEC. 3. Section 66478.5 of the Government Code is amended to read:

66478.5. (a) No local agency shall approve either a tentative or a final map of any proposed subdivision to be fronted upon a public waterway, river, or stream which does not provide for a dedication of a public easement along a portion of the bank of the river or stream bordering or lying within the proposed subdivision.

(b) The extent, width and character of the public easement shall be reasonably defined to achieve reasonable public use of the public

waterway, river, or stream consistent with public safety. The reasonableness and extent of the easement shall be determined by the local agency in which the proposed subdivision is to be located. In making the determination for reasonably defining the extent, width, and character of the public easement, the local agency shall consider all of the following:

(1) That the easement may be for a foot trail, bicycle trail, or horse trail.

(2) The size of the subdivision.

(3) The type of riverbank and the various appropriate recreational, educational and scientific uses including, but not limited to, swimming, diving, boating, fishing, water skiing, scientific collection and teaching.

(4) The likelihood of trespass on private property and reasonable means of avoiding these trespasses.

SEC. 4. Section 66478.6 of the Government Code is amended to read:

66478.6. Any public access route or routes and any easement along the bank of a public waterway, river, or stream provided by the subdivider shall be expressly designated on the tentative or final map, and this map shall expressly designate the governmental entity to which the route or routes are dedicated and its acceptance of the dedication.

SEC. 5. Section 66478.8 of the Government Code is amended to read:

66478.8. Nothing in Sections 66478.1 to 66478.10, inclusive, of this article shall require a local agency to disapprove either a tentative or final map solely on the basis that the reasonable public access otherwise required by this article is not provided through or across the subdivision itself, if the local agency makes a finding that the reasonable public access is otherwise available within a reasonable distance from the subdivision and identifies the location of the reasonable public access.

The finding shall be set forth on the face of the tentative or final map.

SEC. 6. Section 66478.11 of the Government Code is amended to read:

66478.11. (a) No local agency shall approve either the tentative or the final map of any subdivision fronting upon the coastline or shoreline which subdivision does not provide or have available reasonable public access by fee or easement from public highways to land below the ordinary high water mark on any ocean coastline or bay shoreline within or at a reasonable distance from the subdivision.

Any public access route or routes provided by the subdivider shall be expressly designated on the tentative or final map, and the map shall expressly designate the governmental entity to which the route or routes are dedicated.

(b) Reasonable public access, as used in subdivision (a), shall be determined by the local agency in which the subdivision lies.

(c) In making the determination of what shall be reasonable public access, the local agency shall consider:

(1) That access may be by highway, foot trail, bike trail, horse trail, or any other means of travel.

(2) The size of the subdivision.

(3) The type of coastline or shoreline and the various appropriate recreational, educational, and scientific uses, including, but not limited to, diving, sunbathing, surfing, walking, swimming, fishing, beachcombing, taking of shellfish and scientific exploration.

(4) The likelihood of trespass on private property and reasonable means of avoiding the trespass.

(d) Nothing in this section shall require a local agency to disapprove either a tentative or final map solely on the basis that the reasonable public access otherwise required by this section is not provided through or across the subdivision itself, if the local agency makes a finding that the reasonable public access is otherwise available within a reasonable distance from the subdivision and identifies the location of the reasonable public access.

The finding shall be set forth on the face of the tentative or final map.

(e) The provisions of this section shall not apply to the final map of any subdivision the tentative map of which has been approved by a local agency prior to the effective date of this section.

(f) The provisions of this section shall not apply to the final or tentative map of any subdivision which is in compliance with the plan of any planned development or any planned community which has been approved by a local agency prior to December 31, 1968. The exclusion provided by this subdivision shall be in addition to the exclusion provided by subdivision (e).

(g) Nothing in this section shall be construed as requiring the subdivider to improve any access route or routes which are primarily for the benefit of nonresidents of the subdivision area.

(h) Any access route or routes provided by the subdivider pursuant to this section may be conveyed or transferred to any state or local agency by the governmental entity to which the route or routes have been dedicated, at any future time, by mutual consent of such governmental entity and the particular state or local agency. The conveyance or transfer shall be recorded by the recipient state or local agency in the office of the county recorder of the county in which the route or routes are located.

SEC. 7. Section 66478.12 of the Government Code is amended to read:

66478.12. (a) No local agency shall approve either the tentative or the final map of any subdivision fronting upon any lake or reservoir

which is owned in part or entirely by any public agency including the state, which subdivision does not provide or have available reasonable access by fee or easement from public highways to any water of the lake or reservoir upon which the subdivision borders either within the subdivision or a reasonable distance from the subdivision.

Any public access route or routes provided by the subdivider shall be expressly designated on the tentative or final map, and the map shall expressly designate the governmental entity to which the route or routes are dedicated and its acceptance of the dedication.

(b) Reasonable access, as used in subdivision (a), shall be determined by the local agency in which the subdivision lies.

(c) In making the determination of what shall be reasonable access, the local agency shall consider:

(1) That access may be by highway, foot trail, bike trail, horse trail, or any other means of travel.

(2) The size of the subdivision.

(3) The type of shoreline and the various appropriate recreational, educational, and scientific uses, including, but not limited to, swimming, diving, boating, fishing, water skiing, scientific exploration, and teaching.

(4) The likelihood of trespass on private property and reasonable means of avoiding the trespasses.

(d) Nothing in this section shall require a local agency to disapprove either a tentative or final map solely on the basis that the reasonable access otherwise required by this section is not provided through or across the subdivision itself, if the local agency makes a finding that the reasonable access is otherwise available within a reasonable distance from the subdivision and identifies the location of the reasonable public access.

The finding shall be set forth on the face of the tentative or final map.

(e) The provisions of this section shall not apply to the final map of any subdivision the tentative map of which has been approved by a local agency prior to the effective date of this section.

(f) Any access route or routes provided by the subdivider pursuant to this section may be conveyed or transferred to any state or local agency by the governmental entity to which the route or routes have been dedicated, at any future time, by mutual consent of the governmental entity and the particular state or local agency. The conveyance or transfer shall be recorded by the recipient state or local agency in the office of the county recorder of the county in which the route or routes are located.

SEC. 8. 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 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 parcel.

SEC. 9. Section 71111 of the Public Resources Code is amended 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 (e) of Section 65040.12 of the Government Code.

CHAPTER 1110

An act to add Section 11710.1 to the Vehicle Code, relating to vehicles.

[Approved by Governor September 29, 2002. Filed with Secretary of State September 29, 2002.]

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

SECTION 1. Section 11710.1 is added to the Vehicle Code, to read:

11710.1. Notwithstanding subdivision (b) of Section 11710, the bond amount of a dealer who sells vehicles on a wholesale basis only, and who sells fewer than 25 vehicles per year, shall be ten thousand dollars ($10,000).

SEC. 2. Section 11710.1 of the Vehicle Code, as added by Section 1 of this act, shall become operative only if both this bill and Senate Bill 1458 are enacted.

CHAPTER 1111

An act to amend Sections 1351, 1363.05, 1366, 1366.3, 1367, and 1368 of, and to add Sections 1361.5, 1365.1, and 1367.1 to, the Civil Code, relating to common interest developments.

[Approved by Governor September 29, 2002. Filed with Secretary of State September 29, 2002.]

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

SECTION 1. Section 1351 of the Civil Code is amended to read:

1351. As used in this title, the following terms have the following meanings:

(a) ''Association'' means a nonprofit corporation or unincorporated association created for the purpose of managing a common interest development.

(b) ''Common area'' means the entire common interest development except the separate interests therein. The estate in the common area may be a fee, a life estate, an estate for years, or any combination of the

foregoing. However, the common area for a planned development specified in paragraph (2) of subdivision (k) may consist of mutual or reciprocal easement rights appurtenant to the separate interests.

(c) ''Common interest development'' means any of the following:

(1) A community apartment project.

(2) A condominium project.

(3) A planned development.

(4) A stock cooperative.

(d) ''Community apartment project'' means a development in which an undivided interest in land is coupled with the right of exclusive occupancy of any apartment located thereon.

(e) ''Condominium plan'' means a plan consisting of (1) a description or survey map of a condominium project, which shall refer to or show monumentation on the ground, (2) a three-dimensional description of a condominium project, one or more dimensions of which may extend for an indefinite distance upwards or downwards, in sufficient detail to identify the common areas and each separate interest, and (3) a certificate consenting to the recordation of the condominium plan pursuant to this title signed and acknowledged by the following:

(A) The record owner of fee title to that property included in the condominium project.

(B) In the case of a condominium project which will terminate upon the termination of an estate for years, the certificate shall be signed and acknowledged by all lessors and lessees of the estate for years.

(C) In the case of a condominium project subject to a life estate, the certificate shall be signed and acknowledged by all life tenants and remainder interests.

(D) The certificate shall also be signed and acknowledged by either the trustee or the beneficiary of each recorded deed of trust, and the mortgagee of each recorded mortgage encumbering the property.

Owners of mineral rights, easements, rights-of-way, and other nonpossessory interests do not need to sign the condominium plan. Further, in the event a conversion to condominiums of a community apartment project or stock cooperative has been approved by the required number of owners, trustees, beneficiaries, and mortgagees pursuant to Section 66452.10 of the Government Code, the certificate need only be signed by those owners, trustees, beneficiaries, and mortgagees approving the conversion.

A condominium plan may be amended or revoked by a subsequently acknowledged recorded instrument executed by all the persons whose signatures would be required pursuant to this subdivision.

(f) A ''condominium project'' means a development consisting of condominiums. A condominium consists of an undivided interest in common in a portion of real property coupled with a separate interest in

space called a unit, the boundaries of which are described on a recorded final map, parcel map, or condominium plan in sufficient detail to locate all boundaries thereof. The area within these boundaries may be filled with air, earth, or water, or any combination thereof, and need not be physically attached to land except by easements for access and, if necessary, support. The description of the unit may refer to (1) boundaries described in the recorded final map, parcel map, or condominium plan, (2) physical boundaries, either in existence, or to be constructed, such as walls, floors, and ceilings of a structure or any portion thereof, (3) an entire structure containing one or more units, or (4) any combination thereof. The portion or portions of the real property held in undivided interest may be all of the real property, except for the separate interests, or may include a particular three-dimensional portion thereof, the boundaries of which are described on a recorded final map, parcel map, or condominium plan. The area within these boundaries may be filled with air, earth, or water, or any combination thereof, and need not be physically attached to land except by easements for access and, if necessary, support. An individual condominium within a condominium project may include, in addition, a separate interest in other portions of the real property.

(g) ''Declarant'' means the person or group of persons designated in the declaration as declarant, or if no declarant is designated, the person or group of persons who sign the original declaration or who succeed to special rights, preferences, or privileges designated in the declaration as belonging to the signator of the original declaration.

(h) ''Declaration'' means the document, however denominated, which contains the information required by Section 1353.

(i) ''Exclusive use common area'' means a portion of the common areas designated by the declaration for the exclusive use of one or more, but fewer than all, of the owners of the separate interests and which is or will be appurtenant to the separate interest or interests.

(1) Unless the declaration otherwise provides, any shutters, awnings, window boxes, doorsteps, stoops, porches, balconies, patios, exterior doors, doorframes, and hardware incident thereto, screens and windows or other fixtures designed to serve a single separate interest, but located outside the boundaries of the separate interest, are exclusive use common areas allocated exclusively to that separate interest.

(2) Notwithstanding the provisions of the declaration, internal and external telephone wiring designed to serve a single separate interest, but located outside the boundaries of the separate interest, are exclusive use common areas allocated exclusively to that separate interest.

(j) ''Governing documents'' means the declaration and any other documents, such as bylaws, operating rules of the association, articles

of incorporation, or articles of association, which govern the operation of the common interest development or association.

(k) ''Planned development'' means a development (other than a community apartment project, a condominium project, or a stock cooperative) having either or both of the following features:

(1) The common area is owned either by an association or in common by the owners of the separate interests who possess appurtenant rights to the beneficial use and enjoyment of the common area.

(2) A power exists in the association to enforce an obligation of an owner of a separate interest with respect to the beneficial use and enjoyment of the common area by means of an assessment which may become a lien upon the separate interests in accordance with Section 1367 or 1367.1.

(*l*) ''Separate interest'' has the following meanings:

(1) In a community apartment project, ''separate interest'' means the exclusive right to occupy an apartment, as specified in subdivision (d).

(2) In a condominium project, ''separate interest'' means an individual unit, as specified in subdivision (f).

(3) In a planned development, ''separate interest'' means a separately owned lot, parcel, area, or space.

(4) In a stock cooperative, ''separate interest'' means the exclusive right to occupy a portion of the real property, as specified in subdivision (m).

Unless the declaration or condominium plan, if any exists, otherwise provides, if walls, floors, or ceilings are designated as boundaries of a separate interest, the interior surfaces of the perimeter walls, floors, ceilings, windows, doors, and outlets located within the separate interest are part of the separate interest and any other portions of the walls, floors, or ceilings are part of the common areas.

The estate in a separate interest may be a fee, a life estate, an estate for years, or any combination of the foregoing.

(m) ''Stock cooperative'' means a development in which a corporation is formed or availed of, primarily for the purpose of holding title to, either in fee simple or for a term of years, improved real property, and all or substantially all of the shareholders of the corporation receive a right of exclusive occupancy in a portion of the real property, title to which is held by the corporation. The owners' interest in the corporation, whether evidenced by a share of stock, a certificate of membership, or otherwise, shall be deemed to be an interest in a common interest development and a real estate development for purposes of subdivision (f) of Section 25100 of the Corporations Code.

A ''stock cooperative'' includes a limited equity housing cooperative which is a stock cooperative that meets the criteria of Section 33007.5 of the Health and Safety Code.

SEC. 2. Section 1361.5 is added to the Civil Code, to read:

1361.5. Except as otherwise provided in law, an order of the court, or an order pursuant to a final and binding arbitration decision, an association may not deny an owner or occupant physical access to his or her separate interest, either by restricting access through the common areas to the owner's separate interest, or by restricting access solely to the owner's separate interest.

SEC. 3. Section 1363.05 of the Civil Code is amended to read:

1363.05. (a) This section shall be known and may be cited as the Common Interest Development Open Meeting Act.

(b) Any member of the association may attend meetings of the board of directors of the association, except when the board adjourns to executive session to consider litigation, matters relating to the formation of contracts with third parties, member discipline, personnel matters, or to meet with a member, upon the member's request, regarding the member's payment of assessments, as specified in Section 1367 or 1367.1. The board of directors of the association shall meet in executive session, if requested by a member who may be subject to a fine, penalty, or other form of discipline, and the member shall be entitled to attend the executive session.

(c) Any matter discussed in executive session shall be generally noted in the minutes of the immediately following meeting that is open to the entire membership.

(d) The minutes, minutes proposed for adoption that are marked to indicate draft status, or a summary of the minutes, of any meeting of the board of directors of an association, other than an executive session, shall be available to members within 30 days of the meeting. The minutes, proposed minutes, or summary minutes shall be distributed to any member of the association upon request and upon reimbursement of the association's costs for making that distribution.

(e) Members of the association shall be notified in writing at the time that the pro forma budget required in Section 1365 is distributed, or at the time of any general mailing to the entire membership of the association, of their right to have copies of the minutes of meetings of the board of directors, and how and where those minutes may be obtained.

(f) As used in this section, ''meeting'' includes any congregation of a majority of the members of the board at the same time and place to hear, discuss, or deliberate upon any item of business scheduled to be heard by the board, except those matters that may be discussed in executive session.

(g) Unless the time and place of meeting is fixed by the bylaws, or unless the bylaws provide for a longer period of notice, members shall be given notice of the time and place of a meeting as defined in

subdivision (f), except for an emergency meeting, at least four days prior to the meeting. Notice shall be given by posting the notice in a prominent place or places within the common area and by mail to any owner who had requested notification of board meetings by mail, at the address requested by the owner. Notice may also be given, by mail or delivery of the notice to each unit in the development or by newsletter or similar means of communication.

(h) An emergency meeting of the board may be called by the president of the association, or by any two members of the governing body other than the president, if there are circumstances that could not have been reasonably foreseen which require immediate attention and possible action by the board, and which of necessity make it impracticable to provide notice as required by this section.

(i) The board of directors of the association shall permit any member of the association to speak at any meeting of the association or the board of directors, except for meetings of the board held in executive session. A reasonable time limit for all members of the association to speak to the board of directors or before a meeting of the association shall be established by the board of directors.

SEC. 4. Section 1365.1 is added to the Civil Code, to read:

1365.1. (a) The association shall distribute the written notice described in subdivision (b) to each member of the association during the 60-day period immediately preceding the beginning of the association's fiscal year. The notice shall be printed in at least 12-point type. An association distributing the notice to an owner of an interest that is described in Section 11003.5 of the Business and Professions Code may delete from the notice described in subdivision (b) the portion regarding meetings and payment plans.

(b) The notice required by this section shall read as follows:

"NOTICE

ASSESSMENTS AND FORECLOSURE

This notice outlines some of the rights and responsibilities of owners of property in common interest developments and the associations that manage them. Please refer to the sections of the Civil Code indicated for further information. A portion of the information in this notice applies only to liens recorded on or after January 1, 2003. You may wish to consult a lawyer if you dispute an assessment.

ASSESSMENTS AND NONJUDICIAL FORECLOSURE

The failure to pay association assessments may result in the loss of an owner's property without court action, often referred to as nonjudicial foreclosure. When using nonjudicial foreclosure, the association records a lien on the owner's property. The owner's property may be sold to satisfy the lien if the lien is not paid. Assessments become delinquent 15 days after they are due, unless the governing documents of the association provide for a longer time. (Sections 1366 and 1367.1 of the Civil Code)

In a nonjudicial foreclosure, the association may recover assessments, reasonable costs of collection, reasonable attorney's fees, late charges, and interest. The association may not use nonjudicial foreclosure to collect fines or penalties, except for costs to repair common areas damaged by a member or a member's guests, if the governing documents provide for this. (Sections 1366 and 1367.1 of the Civil Code)

The association must comply with the requirements of Section 1367.1 of the Civil Code when collecting delinquent assessments. If the association fails to follow these requirements, it may not record a lien on the owner's property until it has satisfied those requirements. Any additional costs that result from satisfying the requirements are the responsibility of the association. (Section 1367.1 of the Civil Code)

At least 30 days prior to recording a lien on an owner's separate interest, the association must provide the owner of record with certain documents by certified mail. Among these documents, the association must send a description of its collection and lien enforcement procedures and the method of calculating the amount. It must also provide an itemized statement of the charges owed by the owner. An owner has a right to review the association's records to verify the debt. (Section 1367.1 of the Civil Code)

If a lien is recorded against an owner's property in error, the person who recorded the lien is required to record a lien release within 21 days, and to provide an owner certain documents in this regard. (Section 1367.1 of the Civil Code)

The collection practices of the association may be governed by state and federal laws regarding fair debt collection. Penalties can be imposed for debt collection practices that violate these laws.

PAYMENTS

When an owner makes a payment, he or she may request a receipt, and the association is required to provide it. On the receipt, the association must indicate the date of payment and the person who received it. The association must inform owners of a mailing address for overnight payments. (Sections 1367.1 and 1367.1 of the Civil Code)

An owner may dispute an assessment debt by giving the board of the association a written explanation, and the board must respond within 15 days if certain conditions are met. An owner may pay assessments that are in dispute in full under protest, and then request alternative dispute resolution. (Sections 1366.3 and 1367.1 of the Civil Code)

An owner is not liable for charges, interest, and costs of collection, if it is established that the assessment was paid properly on time. (Section 1367.1 of the Civil Code)

MEETINGS AND PAYMENT PLANS

An owner of a separate interest that is not a time-share may request the association to consider a payment plan to satisfy a delinquent assessment. The association must inform owners of the standards for payment plans, if any exist. (Section 1367.1 of the Civil Code)

The board of the directors must meet with an owner who makes a proper written request for a meeting to discuss a payment plan when the owner has received a notice of a delinquent assessment. These payment plans must conform with the payment plan standards of the association, if they exist. (Section 1367.1 of the Civil Code)''

SEC. 5. Section 1366 of the Civil Code is amended to read:

1366. (a) Except as provided in this section, the association shall levy regular and special assessments sufficient to perform its obligations under the governing documents and this title. However, annual increases in regular assessments for any fiscal year, as authorized by subdivision (b), shall not be imposed unless the board has complied with subdivision (a) of Section 1365 with respect to that fiscal year, or has obtained the approval of owners, constituting a quorum, casting a majority of the votes at a meeting or election of the association conducted in accordance with Chapter 5 (commencing with Section 7510) of Part 3 of Division 2 of Title 1 of the Corporations Code and Section 7613 of the Corporations Code. For the purposes of this section, ''quorum'' means more than 50 percent of the owners of an association.

(b) Notwithstanding more restrictive limitations placed on the board by the governing documents, the board of directors may not impose a regular assessment that is more than 20 percent greater than the regular assessment for the association's preceding fiscal year or impose special assessments which in the aggregate exceed 5 percent of the budgeted gross expenses of the association for that fiscal year without the approval of owners, constituting a quorum, casting a majority of the votes at a meeting or election of the association conducted in accordance with Chapter 5 (commencing with Section 7510) of Part 3 of Division 2 of Title 1 of the Corporations Code and Section 7613 of the Corporations Code. For the purposes of this section, quorum means more than 50

percent of the owners of an association. This section does not limit assessment increases necessary for emergency situations. For purposes of this section, an emergency situation is any one of the following:

(1) An extraordinary expense required by an order of a court.

(2) An extraordinary expense necessary to repair or maintain the common interest development or any part of it for which the association is responsible where a threat to personal safety on the property is discovered.

(3) An extraordinary expense necessary to repair or maintain the common interest development or any part of it for which the association is responsible that could not have been reasonably foreseen by the board in preparing and distributing the pro forma operating budget under Section 1365. However, prior to the imposition or collection of an assessment under this subdivision, the board shall pass a resolution containing written findings as to the necessity of the extraordinary expense involved and why the expense was not or could not have been reasonably foreseen in the budgeting process, and the resolution shall be distributed to the members with the notice of assessment.

(c) Regular assessments imposed or collected to perform the obligations of an association under the governing documents or this title shall be exempt from execution by a judgment creditor of the association only to the extent necessary for the association to perform essential services, such as paying for utilities and insurance. In determining the appropriateness of an exemption, a court shall ensure that only essential services are protected under this subdivision.

This exemption shall not apply to any consensual pledges, liens, or encumbrances that have been approved by the owners of an association, constituting a quorum, casting a majority of the votes at a meeting or election of the association, or to any state tax lien, or to any lien for labor or materials supplied to the common area.

(d) The association shall provide notice by first-class mail to the owners of the separate interests of any increase in the regular or special assessments of the association, not less than 30 nor more than 60 days prior to the increased assessment becoming due.

(e) Regular and special assessments levied pursuant to the governing documents are delinquent 15 days after they become due, unless the declaration provides a longer time period, in which case the longer time period shall apply. If an assessment is delinquent the association may recover all of the following:

(1) Reasonable costs incurred in collecting the delinquent assessment, including reasonable attorney's fees.

(2) A late charge not exceeding 10 percent of the delinquent assessment or ten dollars ($10), whichever is greater, unless the declaration specifies a late charge in a smaller amount, in which case any

late charge imposed shall not exceed the amount specified in the declaration.

(3) Interest on all sums imposed in accordance with this section, including the delinquent assessments, reasonable fees and costs of collection, and reasonable attorney's fees, at an annual interest rate not to exceed 12 percent, commencing 30 days after the assessment becomes due, unless the declaration specifies the recovery of interest at a rate of a lesser amount, in which case the lesser rate of interest shall apply.

(f) Associations are hereby exempted from interest-rate limitations imposed by Article XV of the California Constitution, subject to the limitations of this section.

SEC. 6. Section 1366.3 of the Civil Code is amended to read:

1366.3. (a) The exception for disputes related to association assessments in subdivision (b) of Section 1354 shall not apply if, in a dispute between the owner of a separate interest and the association regarding the assessments imposed by the association, the owner of the separate interest chooses to pay in full to the association all of the charges listed in paragraphs (1) to (4), inclusive, and states by written notice that the amount is paid under protest, and the written notice is mailed by certified mail not more than 30 days from the recording of a notice of delinquent assessment in accordance with Section 1367 or 1367.1; and in those instances, the association shall inform the owner that the owner may resolve the dispute through alternative dispute resolution as set forth in Section 1354, civil action, and any other procedures to resolve the dispute that may be available through the association.

(1) The amount of the assessment in dispute.

(2) Late charges.

(3) Interest.

(4) All reasonable fees and costs associated with the preparation and filing of a notice of delinquent assessment, including all mailing costs, and including reasonable attorney's fees not to exceed four hundred twenty-five dollars ($425).

(b) The right of any owner of a separate interest to utilize alternative dispute resolution under this section may not be exercised more than two times in any single calendar year, and not more than three times within any five calendar years. Nothing within this section shall preclude any owner of a separate interest and the association, upon mutual agreement, from entering into alternative dispute resolution for a number of times in excess of the limits set forth in this section. The owner of a separate interest may request and be awarded through alternative dispute resolution reasonable interest to be paid by the association on the total amount paid under paragraphs (1) to (4), inclusive, of subdivision (a), if it is determined through alternative dispute resolution that the assessment levied by the association was not correctly levied.

SEC. 7. Section 1367 of the Civil Code is amended to read:

1367. (a) A regular or special assessment and any late charges, reasonable costs of collection, and interest, as assessed in accordance with Section 1366, shall be a debt of the owner of the separate interest at the time the assessment or other sums are levied. Before an association may place a lien upon the separate interest of an owner to collect a debt which is past due under this subdivision, the association shall notify the owner in writing by certified mail of the fee and penalty procedures of the association, provide an itemized statement of the charges owed by the owner, including items on the statement which indicate the assessments owed, any late charges and the method of calculation, any attorney's fees, and the collection practices used by the association, including the right of the association to the reasonable costs of collection. In addition, any payments toward that debt shall first be applied to the assessments owed, and only after the principal owed is paid in full shall the payments be applied to interest or collection expenses.

(b) The amount of the assessment, plus any costs of collection, late charges, and interest assessed in accordance with Section 1366, shall be a lien on the owner's interest in the common interest development from and after the time the association causes to be recorded with the county recorder of the county in which the separate interest is located, a notice of delinquent assessment, which shall state the amount of the assessment and other sums imposed in accordance with Section 1366, a legal description of the owner's interest in the common interest development against which the assessment and other sums are levied, the name of the record owner of the owner's interest in the common interest development against which the lien is imposed, and, in order for the lien to be enforced by nonjudicial foreclosure as provided in subdivision (e) the name and address of the trustee authorized by the association to enforce the lien by sale. The notice of delinquent assessment shall be signed by the person designated in the declaration or by the association for that purpose, or if no one is designated, by the president of the association, and mailed in the manner set forth in Section 2924b, to all record owners of the owner's interest in the common interest development no later than 10 calendar days after recordation. Upon payment of the sums specified in the notice of delinquent assessment, the association shall cause to be recorded a further notice stating the satisfaction and release of the lien thereof. A monetary penalty imposed by the association as a means of reimbursing the association for costs incurred by the association in the repair of damage to common areas and facilities for which the member or the member's guests or tenants were responsible may become a lien against the member's separate interest enforceable by the sale of the interest under Sections 2924, 2924b, and

2924c, provided the authority to impose a lien is set forth in the governing documents. It is the intent of the Legislature not to contravene Section 2792.26 of Title 10 of the California Code of Regulations, as that section appeared on January 1, 1996, for associations of subdivisions that are being sold under authority of a subdivision public report, pursuant to Part 2 (commencing with Section 11000) of Division 4 of the Business and Professions Code.

(c) Except as indicated in subdivision (b), a monetary penalty imposed by the association as a disciplinary measure for failure of a member to comply with the governing instruments, except for the late payments, may not be characterized nor treated in the governing instruments as an assessment which may become a lien against the member's subdivision interest enforceable by the sale of the interest under Sections 2924, 2924b, and 2924c.

(d) A lien created pursuant to subdivision (b) shall be prior to all other liens recorded subsequent to the notice of assessment, except that the declaration may provide for the subordination thereof to any other liens and encumbrances.

(e) After the expiration of 30 days following the recording of a lien created pursuant to subdivision (b), the lien may be enforced in any manner permitted by law, including sale by the court, sale by the trustee designated in the notice of delinquent assessment, or sale by a trustee substituted pursuant to Section 2934a. Any sale by the trustee shall be conducted in accordance with the provisions of Sections 2924, 2924b, and 2924c applicable to the exercise of powers of sale in mortgages and deeds of trusts.

(f) Nothing in this section or in subdivision (a) of Section 726 of the Code of Civil Procedure prohibits actions against the owner of a separate interest to recover sums for which a lien is created pursuant to this section or prohibits an association from taking a deed in lieu of foreclosure.

(g) This section only applies to liens recorded on or after January 1, 1986 and prior to January 1, 2003.

SEC. 8. Section 1367.1 is added to the Civil Code, to read:

1367.1. (a) A regular or special assessment and any late charges, reasonable fees and costs of collection, reasonable attorney's fees, if any, and interest, if any, as determined in accordance with Section 1366, shall be a debt of the owner of the separate interest at the time the assessment or other sums are levied. At least 30 days prior to recording a lien upon the separate interest of the owner of record to collect a debt that is past due under this subdivision, the association shall notify the owner of record in writing by certified mail of the following:

(1) A general description of the collection and lien enforcement procedures of the association and the method of calculation of the

amount, a statement that the owner of the separate interest has the right to inspect the association records, pursuant to Section 8333 of the Corporations Code, and the following statement in 14-point boldface type, if printed, or in capital letters, if typed: ''IMPORTANT NOTICE: IF YOUR SEPARATE INTEREST IS PLACED IN FORECLOSURE BECAUSE YOU ARE BEHIND IN YOUR ASSESSMENTS, IT MAY BE SOLD WITHOUT COURT ACTION''.

(2) An itemized statement of the charges owed by the owner, including items on the statement which indicate the amount of any delinquent assessments, the fees and reasonable costs of collection, reasonable attorney's fees, any late charges, and interest, if any.

(3) A statement that the owner shall not be liable to pay the charges, interest, and costs of collection, if it is determined the assessment was paid on time to the association.

(4) The right to request a meeting with the board as provided by subdivision (c).

(b) Any payments made by the owner of a separate interest toward the debt set forth, as required in subdivision (a), shall first be applied to the assessments owed, and, only after the assessments owed are paid in full shall the payments be applied to the fees and costs of collection, attorney's fees, late charges, or interest. When an owner makes a payment, the owner may request a receipt and the association shall provide it. The receipt shall indicate the date of payment and the person who received it. The association shall provide a mailing address for overnight payment of assessments.

(c) (1) An owner may dispute the debt noticed pursuant to subdivision (a) by submitting to the board a written explanation of the reasons for his or her dispute. The board shall respond in writing to the owner within 15 days of the date of the postmark of the explanation, if the explanation is mailed within 15 days of the postmark of the notice.

(2) An owner, other than an owner of any interest that is described in Section 11003.5 of the Business and Professions Code, may submit a written request to meet with the board to discuss a payment plan for the debt noticed pursuant to subdivision (a). The association shall provide the owners the standards for payment plans, if any exist. The board shall meet with the owner in executive session within 45 days of the postmark of the request, if the request is mailed within 15 days of the date of the postmark of the notice, unless there is no regularly scheduled board meeting within that period, in which case the board may designate a committee of one or more members to meet with the owner.

(d) The amount of the assessment, plus any costs of collection, late charges, and interest assessed in accordance with Section 1366, shall be a lien on the owner's interest in the common interest development from and after the time the association causes to be recorded with the county

recorder of the county in which the separate interest is located, a notice of delinquent assessment, which shall state the amount of the assessment and other sums imposed in accordance with Section 1366, a legal description of the owner's interest in the common interest development against which the assessment and other sums are levied, the name of the record owner of the owner's interest in the common interest development against which the lien is imposed. In order for the lien to be enforced by nonjudicial foreclosure as provided in subdivision (g), the notice of delinquent assessment shall state the name and address of the trustee authorized by the association to enforce the lien by sale. The notice of delinquent assessment shall be signed by the person designated in the declaration or by the association for that purpose, or if no one is designated, by the president of the association, and mailed in the manner set forth in Section 2924b, to all record owners of the owner's interest in the common interest development no later than 10 calendar days after recordation. Within 21 days of the payment of the sums specified in the notice of delinquent assessment, the association shall record or cause to be recorded in the office of the county recorder in which the notice of delinquent assessment is recorded a lien release or notice of rescission and provide the owner of the separate interest a copy of the lien release or notice that the delinquent assessment has been satisfied. A monetary charge imposed by the association as a means of reimbursing the association for costs incurred by the association in the repair of damage to common areas and facilities for which the member or the member's guests or tenants were responsible may become a lien against the member's separate interest enforceable by the sale of the interest under Sections 2924, 2924b, and 2924c, provided the authority to impose a lien is set forth in the governing documents. It is the intent of the Legislature not to contravene Section 2792.26 of Title 10 of the California Code of Regulations, as that section appeared on January 1, 1996, for associations of subdivisions that are being sold under authority of a subdivision public report, pursuant to Part 2 (commencing with Section 11000) of Division 4 of the Business and Professions Code.

(e) Except as indicated in subdivision (d), a monetary penalty imposed by the association as a disciplinary measure for failure of a member to comply with the governing instruments, except for the late payments, may not be characterized nor treated in the governing instruments as an assessment that may become a lien against the member's subdivision separate interest enforceable by the sale of the interest under Sections 2924, 2924b, and 2924c.

(f) A lien created pursuant to subdivision (d) shall be prior to all other liens recorded subsequent to the notice of assessment, except that the declaration may provide for the subordination thereof to any other liens and encumbrances.

(g) An association may not voluntarily assign or pledge the association's right to collect payments or assessments, or to enforce or foreclose a lien to a third party, except when the assignment or pledge is made to a financial institution or lender chartered or licensed under federal or state law, when acting within the scope of that charter or license, as security for a loan obtained by the association; however, the foregoing provision may not restrict the right or ability of an association to assign any unpaid obligations of a former member to a third party for purposes of collection. Subject to the limitations of this subdivision, after the expiration of 30 days following the recording of a lien created pursuant to subdivision (d), the lien may be enforced in any manner permitted by law, including sale by the court, sale by the trustee designated in the notice of delinquent assessment, or sale by a trustee substituted pursuant to Section 2934a. Any sale by the trustee shall be conducted in accordance with Sections 2924, 2924b, and 2924c applicable to the exercise of powers of sale in mortgages and deeds of trusts. The fees of a trustee may not exceed the amounts prescribed in Sections 2924c and 2924d.

(h) Nothing in this section or in subdivision (a) of Section 726 of the Code of Civil Procedure prohibits actions against the owner of a separate interest to recover sums for which a lien is created pursuant to this section or prohibits an association from taking a deed in lieu of foreclosure.

(i) If it is determined that a lien previously recorded against the separate interest was recorded in error, the party who recorded the lien shall, within 21 calendar days, record or cause to be recorded in the office of the county recorder in which the notice of delinquent assessment is recorded a lien release or notice of rescission and provide the owner of the separate interest with a declaration that the lien filing or recording was in error and a copy of the lien release or notice of rescission.

(j) (1) An association that fails to comply with the procedures set forth in this section shall, prior to recording a lien, recommence the required notice process.

(2) Any costs associated with recommencing the notice process shall be borne by the association and not by the owner of a separate interest.

(k) This section only applies to liens recorded on or after January 1, 2003.

SEC. 9. Section 1368 of the Civil Code is amended to read:

1368. (a) The owner of a separate interest, other than an owner subject to the requirements of Section 11018.6 of the Business and Professions Code, shall, as soon as practicable before transfer of title to the separate interest or execution of a real property sales contract therefor, as defined in Section 2985, provide the following to the prospective purchaser:

(1) A copy of the governing documents of the common interest development.

(2) If there is a restriction in the governing documents limiting the occupancy, residency, or use of a separate interest on the basis of age in a manner different from that provided in Section 51.3, a statement that the restriction is only enforceable to the extent permitted by Section 51.3 and a statement specifying the applicable provisions of Section 51.3.

(3) A copy of the most recent documents distributed pursuant to Section 1365.

(4) A true statement in writing obtained from an authorized representative of the association as to the amount of the association's current regular and special assessments and fees, any assessments levied upon the owner's interest in the common interest development that are unpaid on the date of the statement, and any monetary fines or penalties levied upon the owner's interest and unpaid on the date of the statement. The statement obtained from an authorized representative shall also include true information on late charges, interest, and costs of collection which, as of the date of the statement, are or may be made a lien upon the owner's interest in a common interest development pursuant to Section 1367 or 1367.1.

(5) A copy or a summary of any notice previously sent to the owner pursuant to subdivision (h) of Section 1363 that sets forth any alleged violation of the governing documents that remains unresolved at the time of the request. The notice shall not be deemed a waiver of the association's right to enforce the governing documents against the owner or the prospective purchaser of the separate interest with respect to any violation. This paragraph shall not be construed to require an association to inspect an owner's separate interest.

(6) A copy of the preliminary list of defects provided to each member of the association pursuant to Section 1375, unless the association and the builder subsequently enter into a settlement agreement or otherwise resolve the matter and the association complies with Section 1375.1. Disclosure of the preliminary list of defects pursuant to this paragraph shall not waive any privilege attached to the document. The preliminary list of defects shall also include a statement that a final determination as to whether the list of defects is accurate and complete has not been made.

(7) A copy of the latest information provided for in Section 1375.1.

(8) Any change in the association's current regular and special assessments and fees which have been approved by the association's board of directors, but have not become due and payable as of the date disclosure is provided pursuant to this subdivision.

(b) Upon written request, an association shall, within 10 days of the mailing or delivery of the request, provide the owner of a separate interest with a copy of the requested items specified in paragraphs (1) to

(8), inclusive, of subdivision (a). The association may charge a fee for this service, which shall not exceed the association's reasonable cost to prepare and reproduce the requested items.

(c) An association shall not impose or collect any assessment, penalty, or fee in connection with a transfer of title or any other interest except the association's actual costs to change its records and that fee authorized by subdivision (b).

(d) Any person or entity who willfully violates this section shall be liable to the purchaser of a separate interest which is subject to this section for actual damages occasioned thereby and, in addition, shall pay a civil penalty in an amount not to exceed five hundred dollars ($500). In an action to enforce this liability, the prevailing party shall be awarded reasonable attorneys' fees.

(e) Nothing in this section affects the validity of title to real property transferred in violation of this section.

(f) In addition to the requirements of this section, an owner transferring title to a separate interest shall comply with applicable requirements of Sections 1133 and 1134.

SEC. 9.5. Section 1368 of the Civil Code is amended to read:

1368. (a) The owner of a separate interest, other than an owner subject to the requirements of Section 11018.6 of the Business and Professions Code, shall, as soon as practicable before transfer of title to the separate interest or execution of a real property sales contract therefor, as defined in Section 2985, provide the following to the prospective purchaser:

(1) A copy of the governing documents of the common interest development, including a copy of the association's articles of incorporation, or, if not incorporated, a statement in writing from an authorized representative of the association that the association is not incorporated.

(2) If there is a restriction in the governing documents limiting the occupancy, residency, or use of a separate interest on the basis of age in a manner different from that provided in Section 51.3, a statement that the restriction is only enforceable to the extent permitted by Section 51.3 and a statement specifying the applicable provisions of Section 51.3.

(3) A copy of the most recent documents distributed pursuant to Section 1365.

(4) A true statement in writing obtained from an authorized representative of the association as to the amount of the association's current regular and special assessments and fees, any assessments levied upon the owner's interest in the common interest development that are unpaid on the date of the statement, and any monetary fines or penalties levied upon the owner's interest and unpaid on the date of the statement. The statement obtained from an authorized representative shall also

include true information on late charges, interest, and costs of collection which, as of the date of the statement, are or may be made a lien upon the owner's interest in a common interest development pursuant to Section 1367 or 1367.1.

(5) A copy or a summary of any notice previously sent to the owner pursuant to subdivision (h) of Section 1363 that sets forth any alleged violation of the governing documents that remains unresolved at the time of the request. The notice shall not be deemed a waiver of the association's right to enforce the governing documents against the owner or the prospective purchaser of the separate interest with respect to any violation. This paragraph shall not be construed to require an association to inspect an owner's separate interest.

(6) A copy of the preliminary list of defects provided to each member of the association pursuant to Section 1375, unless the association and the builder subsequently enter into a settlement agreement or otherwise resolve the matter and the association complies with Section 1375.1. Disclosure of the preliminary list of defects pursuant to this paragraph shall not waive any privilege attached to the document. The preliminary list of defects shall also include a statement that a final determination as to whether the list of defects is accurate and complete has not been made.

(7) A copy of the latest information provided for in Section 1375.1.

(8) Any change in the association's current regular and special assessments and fees which have been approved by the association's board of directors, but have not become due and payable as of the date disclosure is provided pursuant to this subdivision.

(b) Upon written request, an association shall, within 10 days of the mailing or delivery of the request, provide the owner of a separate interest with a copy of the requested items specified in paragraphs (1) to (8), inclusive, of subdivision (a). The association may charge a fee for this service, which shall not exceed the association's reasonable cost to prepare and reproduce the requested items.

(c) An association shall not impose or collect any assessment, penalty, or fee in connection with a transfer of title or any other interest except the association's actual costs to change its records and that authorized by subdivision (b).

(d) Any person or entity who willfully violates this section shall be liable to the purchaser of a separate interest which is subject to this section for actual damages occasioned thereby and, in addition, shall pay a civil penalty in an amount not to exceed five hundred dollars ($500). In an action to enforce this liability, the prevailing party shall be awarded reasonable attorneys' fees.

(e) Nothing in this section affects the validity of title to real property transferred in violation of this section.

(f) In addition to the requirements of this section, an owner transferring title to a separate interest shall comply with applicable requirements of Sections 1133 and 1134.

SEC. 10. Section 9.5 of this bill incorporates amendments to Section 1368 of the Civil Code proposed by both this bill and AB 643. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2003, (2) each bill amends Section 1368 of the Civil Code, and (3) this bill is enacted after AB 643, in which case Section 9 of this bill shall not become operative.

CHAPTER 1112

An act to amend Sections 8714, 8715, 8802, and 8807 of the Family Code, relating to adoption.

[Approved by Governor September 29, 2002. Filed with Secretary of State September 29, 2002.]

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

SECTION 1. Section 8714 of the Family Code is amended to read:

8714. (a) A person desiring to adopt a child may for that purpose file a petition in the county in which the petitioner resides or, if the petitioner is not a resident of this state, in the county in which the birth parent or birth parents resided when the relinquishment of parental rights for the purpose of adoption was signed. Where a child has been adjudged to be a dependent of the juvenile court pursuant to Section 300 of the Welfare and Institutions Code, and has thereafter been freed for adoption by the juvenile court, the petition may be filed either in the county where the petitioner resides or in the county where the child was freed for adoption.

(b) The court clerk shall immediately notify the department at Sacramento in writing of the pendency of the proceeding and of any subsequent action taken.

(c) If the petitioner has entered into a postadoption contact agreement with the birth parent as set forth in Section 8714.7, the agreement, signed by the participating parties, shall be attached to and filed with the petition for adoption under subdivision (a).

(d) 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. The name the child had before adoption shall appear in the joinder signed by the licensed adoption agency.

(e) 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.

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

SEC. 2. Section 8715 of the Family Code is amended to read:

8715. (a) The department or licensed adoption agency, whichever is a party to, or joins in, the petition, shall submit a full report of the facts of the case to the court.

(b) If the child has been adjudged to be a dependent of the juvenile court pursuant to Section 300 of the Welfare and Institutions Code, and has thereafter been freed for adoption by the juvenile court, the report required by this section shall describe whether the requirements of subdivision (e) of Section 16002 of the Welfare and Institutions Code have been completed and what, if any, plan exists for facilitation of postadoptive contact between the child who is the subject of the adoption petition and his or her siblings and half siblings.

(c) If a petition for adoption has been filed with a postadoption contact agreement pursuant to Section 8714.7, the report shall address whether the postadoption contact agreement has been entered into voluntarily, and whether it is in the best interests of the child who is the subject of the petition.

(d) The department may also submit a report in those cases in which a licensed adoption agency is a party or joins in the adoption petition.

(e) If a petitioner is a resident of a state other than California, an updated and current homestudy report, conducted and approved by a licensed adoption agency or other authorized resource in the state in which the petitioner resides, shall be reviewed and endorsed by the department or licensed adoption agency, if the standards and criteria established for a homestudy report in the other state are substantially commensurate with the homestudy standards and criteria established in California adoption regulations.

SEC. 3. Section 8802 of the Family Code is amended to read:

8802. (a) (1) Any of the following persons who desire to adopt a child may, for that purpose, file a petition in the county in which the petitioner resides or, if the petitioner is not a resident of this state, in the county in which the placing birth parent or birth parents resided when the adoption placement agreement was signed, or the county in which the placing birth parent or birth parents resided when the petition was filed

(A) An adult who is related to the child or the child's half sibling by blood or affinity, including all relatives whose status is preceded by the words "step," "great," "great-great," or "grand," or the spouse of any of these persons, even if the marriage was terminated by death or dissolution.

(B) A person named in the will of a deceased parent as an intended adoptive parent where the child has no other parent.

(C) A person with whom a child has been placed for adoption.

(D) A legal guardian who has been the child's legal guardian for more than one year. However, if the parent nominated the guardian for a purpose other than adoption for a specified time period, or if the guardianship was established pursuant to Section 360 of the Welfare and Institutions Code, the guardianship shall have been in existence for not less than three years.

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

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

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

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

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

SEC. 4. Section 8807 of the Family Code is amended to read:

8807. (a) Except as provided in subdivisions (b) and (c), within 180 days after the filing of the petition, the department or delegated county adoption agency shall investigate the proposed independent adoption and submit to the court a full report of the facts disclosed by its inquiry with a recommendation regarding the granting of the petition.

(b) If the investigation establishes that there is a serious question concerning the suitability of the petitioners or the care provided the child

or the availability of the consent to adoption, the report shall be filed immediately.

(c) In its discretion, the court may allow additional time for the filing of the report, after at least five days' notice to the petitioner or petitioners and an opportunity for the petitioner or petitioners to be heard with respect to the request for additional time.

(d) If a petitioner is a resident of a state other than California, an updated and current homestudy report, conducted and approved by a licensed adoption agency or other authorized resource in the state in which the petitioner resides, shall be reviewed and endorsed by the department or delegated county adoption agency, if the standards and criteria established for a homestudy report in the other state are substantially commensurate with the homestudy standards and criteria established in California adoption regulations.

CHAPTER 1113

An act to amend, repeal, and add Section 11126 of the Government Code, relating to open meetings.

[Approved by Governor September 29, 2002. Filed with Secretary of State September 29, 2002.]

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

SECTION 1. Section 11126 of the Government Code is amended to read:

11126. (a) (1) Nothing in this article shall be construed to prevent a state body from holding closed sessions during a regular or special meeting to consider the appointment, employment, evaluation of performance, or dismissal of a public employee or to hear complaints or charges brought against that employee by another person or employee unless the employee requests a public hearing.

(2) As a condition to holding a closed session on the complaints or charges to consider disciplinary action or to consider dismissal, the employee shall be given written notice of his or her right to have a public hearing, rather than a closed session, and that notice shall be delivered to the employee personally or by mail at least 24 hours before the time for holding a regular or special meeting. If notice is not given, any disciplinary or other action taken against any employee at the closed session shall be null and void.

(3) The state body also may exclude from any public or closed session, during the examination of a witness, any or all other witnesses in the matter being investigated by the state body.

(4) Following the public hearing or closed session, the body may deliberate on the decision to be reached in a closed session.

(b) For the purposes of this section, ''employee'' does not include any person who is elected to, or appointed to a public office by, any state body. However, officers of the California State University who receive compensation for their services, other than per diem and ordinary and necessary expenses, shall, when engaged in that capacity, be considered employees. Furthermore, for purposes of this section, the term employee includes a person exempt from civil service pursuant to subdivision (e) of Section 4 of Article VII of the California Constitution.

(c) Nothing in this article shall be construed to do any of the following:

(1) Prevent state bodies that administer the licensing of persons engaging in businesses or professions from holding closed sessions to prepare, approve, grade, or administer examinations.

(2) Prevent an advisory body of a state body that administers the licensing of persons engaged in businesses or professions from conducting a closed session to discuss matters that the advisory body has found would constitute an unwarranted invasion of the privacy of an individual licensee or applicant if discussed in an open meeting, provided the advisory body does not include a quorum of the members of the state body it advises. Those matters may include review of an applicant's qualifications for licensure and an inquiry specifically related to the state body's enforcement program concerning an individual licensee or applicant where the inquiry occurs prior to the filing of a civil, criminal, or administrative disciplinary action against the licensee or applicant by the state body.

(3) Prohibit a state body from holding a closed session to deliberate on a decision to be reached in a proceeding required to be conducted pursuant to Chapter 5 (commencing with Section 11500) or similar provisions of law.

(4) Grant a right to enter any correctional institution or the grounds of a correctional institution where that right is not otherwise granted by law, nor shall anything in this article be construed to prevent a state body from holding a closed session when considering and acting upon the determination of a term, parole, or release of any individual or other disposition of an individual case, or if public disclosure of the subjects under discussion or consideration is expressly prohibited by statute.

(5) Prevent any closed session to consider the conferring of honorary degrees, or gifts, donations, and bequests that the donor or proposed donor has requested in writing to be kept confidential.

(6) Prevent the Alcoholic Beverage Control Appeals Board from holding a closed session for the purpose of holding a deliberative conference as provided in Section 11125.

(7) (A) Prevent a state body from holding closed sessions with its negotiator prior to the purchase, sale, exchange, or lease of real property by or for the state body to give instructions to its negotiator regarding the price and terms of payment for the purchase, sale, exchange, or lease.

(B) However, prior to the closed session, the state body shall hold an open and public session in which it identifies the real property or real properties that the negotiations may concern and the person or persons with whom its negotiator may negotiate.

(C) For purposes of this paragraph, the negotiator may be a member of the state body.

(D) For purposes of this paragraph, ''lease'' includes renewal or renegotiation of a lease.

(E) Nothing in this paragraph shall preclude a state body from holding a closed session for discussions regarding eminent domain proceedings pursuant to subdivision (e).

(8) Prevent the California Postsecondary Education Commission from holding closed sessions to consider matters pertaining to the appointment or termination of the Director of the California Postsecondary Education Commission.

(9) Prevent the Council for Private Postsecondary and Vocational Education from holding closed sessions to consider matters pertaining to the appointment or termination of the Executive Director of the Council for Private Postsecondary and Vocational Education.

(10) Prevent the Franchise Tax Board from holding closed sessions for the purpose of discussion of confidential tax returns or information the public disclosure of which is prohibited by law, or from considering matters pertaining to the appointment or removal of the Executive Officer of the Franchise Tax Board.

(11) Require the Franchise Tax Board to notice or disclose any confidential tax information considered in closed sessions, or documents executed in connection therewith, the public disclosure of which is prohibited pursuant to Article 2 (commencing with Section 19542) of Chapter 7 of Part 10.2 of the Revenue and Taxation Code.

(12) Prevent the Board of Corrections from holding closed sessions when considering reports of crime conditions under Section 6027 of the Penal Code.

(13) Prevent the State Air Resources Board from holding closed sessions when considering the proprietary specifications and performance data of manufacturers.

(14) Prevent the State Board of Education or the Superintendent of Public Instruction, or any committee advising the board or the

superintendent, from holding closed sessions on those portions of its review of assessment instruments pursuant to Chapter 5 (commencing with Section 60600) of, or pursuant to Chapter 8 (commencing with Section 60850) of, Part 33 of the Education Code during which actual test content is reviewed and discussed. The purpose of this provision is to maintain the confidentiality of the assessments under review.

(15) Prevent the California Integrated Waste Management Board or its auxiliary committees from holding closed sessions for the purpose of discussing confidential tax returns, discussing trade secrets or confidential or proprietary information in its possession, or discussing other data, the public disclosure of which is prohibited by law.

(16) Prevent a state body that invests retirement, pension, or endowment funds from holding closed sessions when considering investment decisions. For purposes of consideration of shareholder voting on corporate stocks held by the state body, closed sessions for the purposes of voting may be held only with respect to election of corporate directors, election of independent auditors, and other financial issues that could have a material effect on the net income of the corporation. For the purpose of real property investment decisions that may be considered in a closed session pursuant to this paragraph, a state body shall also be exempt from the provisions of paragraph (7) relating to the identification of real properties prior to the closed session.

(17) Prevent a state body, or boards, commissions, administrative officers, or other representatives that may properly be designated by law or by a state body, from holding closed sessions with its representatives in discharging its responsibilities under Chapter 10 (commencing with Section 3500), Chapter 10.3 (commencing with Section 3512), Chapter 10.5 (commencing with Section 3525), or Chapter 10.7 (commencing of Section 3540) of Division 4 of Title 1 as the sessions relate to salaries, salary schedules, or compensation paid in the form of fringe benefits. For the purposes enumerated in the preceding sentence, a state body may also meet with a state conciliator who has intervened in the proceedings.

(18) (A) Prevent a state body from holding closed sessions to consider matters posing a threat or potential threat of criminal or terrorist activity against the personnel, property, buildings, facilities, or equipment, including electronic data, owned, leased, or controlled by the state body, where disclosure of these considerations could compromise or impede the safety or security of the personnel, property, buildings, facilities, or equipment, including electronic data, owned, leased, or controlled by the state body.

(B) Notwithstanding any other provision of law, a state body, at any regular or special meeting, may meet in a closed session pursuant to subparagraph (A) upon a two-thirds vote of the members present at the meeting.

(C) After meeting in closed session pursuant to subparagraph (A), the state body shall reconvene in open session prior to adjournment and report that a closed session was held pursuant to subparagraph (A), the general nature of the matters considered, and whether any action was taken in closed session.

(D) After meeting in closed session pursuant to subparagraph (A), the state body shall submit to the Legislative Analyst written notification stating that it held this closed session, the general reason or reasons for the closed session, the general nature of the matters considered, and whether any action was taken in closed session. The Legislative Analyst shall retain for no less than four years any written notification received from a state body pursuant to this subparagraph.

(d) (1) Notwithstanding any other provision of law, any meeting of the Public Utilities Commission at which the rates of entities under the commission's jurisdiction are changed shall be open and public.

(2) Nothing in this article shall be construed to prevent the Public Utilities Commission from holding closed sessions to deliberate on the institution of proceedings, or disciplinary actions against any person or entity under the jurisdiction of the commission.

(e) (1) Nothing in this article shall be construed to prevent a state body, based on the advice of its legal counsel, from holding a closed session to confer with, or receive advice from, its legal counsel regarding pending litigation when discussion in open session concerning those matters would prejudice the position of the state body in the litigation.

(2) For purposes of this article, all expressions of the lawyer-client privilege other than those provided in this subdivision are hereby abrogated. This subdivision is the exclusive expression of the lawyer-client privilege for purposes of conducting closed session meetings pursuant to this article. For purposes of this subdivision, litigation shall be considered pending when any of the following circumstances exist:

(A) An adjudicatory proceeding before a court, an administrative body exercising its adjudicatory authority, a hearing officer, or an arbitrator, to which the state body is a party, has been initiated formally.

(B) (i) A point has been reached where, in the opinion of the state body on the advice of its legal counsel, based on existing facts and circumstances, there is a significant exposure to litigation against the state body.

(ii) Based on existing facts and circumstances, the state body is meeting only to decide whether a closed session is authorized pursuant to clause (i).

(C) (i) Based on existing facts and circumstances, the state body has decided to initiate or is deciding whether to initiate litigation.

(ii) The legal counsel of the state body shall prepare and submit to it a memorandum stating the specific reasons and legal authority for the closed session. If the closed session is pursuant to paragraph (1), the memorandum shall include the title of the litigation. If the closed session is pursuant to subparagraph (A) or (B), the memorandum shall include the existing facts and circumstances on which it is based. The legal counsel shall submit the memorandum to the state body prior to the closed session, if feasible, and in any case no later than one week after the closed session. The memorandum shall be exempt from disclosure pursuant to Section 6254.25.

(iii) For purposes of this subdivision, ''litigation'' includes any adjudicatory proceeding, including eminent domain, before a court, administrative body exercising its adjudicatory authority, hearing officer, or arbitrator.

(iv) Disclosure of a memorandum required under this subdivision shall not be deemed as a waiver of the lawyer-client privilege, as provided for under Article 3 (commencing with Section 950) of Chapter 4 of Division 8 of the Evidence Code.

(f) In addition to subdivisions (a), (b), and (c), nothing in this article shall be construed to do any of the following:

(1) Prevent a state body operating under a joint powers agreement for insurance pooling from holding a closed session to discuss a claim for the payment of tort liability or public liability losses incurred by the state body or any member agency under the joint powers agreement.

(2) Prevent the examining committee established by the State Board of Forestry and Fire Protection, pursuant to Section 763 of the Public Resources Code, from conducting a closed session to consider disciplinary action against an individual professional forester prior to the filing of an accusation against the forester pursuant to Section 11503.

(3) Prevent an administrative committee established by the California Board of Accountancy pursuant to Section 5020 of the Business and Professions Code from conducting a closed session to consider disciplinary action against an individual accountant prior to the filing of an accusation against the accountant pursuant to Section 11503. Nothing in this article shall be construed to prevent an examining committee established by the California Board of Accountancy pursuant to Section 5023 of the Business and Professions Code from conducting a closed hearing to interview an individual applicant or accountant regarding the applicant's qualifications.

(4) Prevent a state body, as defined in subdivision (b) of Section 11121, from conducting a closed session to consider any matter that properly could be considered in closed session by the state body whose authority it exercises.

(5) Prevent a state body, as defined in subdivision (d) of Section 11121, from conducting a closed session to consider any matter that properly could be considered in a closed session by the body defined as a state body pursuant to subdivision (a) or (b) of Section 11121.

(6) Prevent a state body, as defined in subdivision (c) of Section 11121, from conducting a closed session to consider any matter that properly could be considered in a closed session by the state body it advises.

(7) Prevent the State Board of Equalization from holding closed sessions for either of the following:

(A) When considering matters pertaining to the appointment or removal of the Executive Secretary of the State Board of Equalization.

(B) For the purpose of hearing confidential taxpayer appeals or data, the public disclosure of which is prohibited by law.

(8) Require the State Board of Equalization to disclose any action taken in closed session or documents executed in connection with that action, the public disclosure of which is prohibited by law pursuant to Sections 15619 and 15641 of this code and Sections 833, 7056, 8255, 9255, 11655, 30455, 32455, 38705, 38706, 43651, 45982, 46751, 50159, 55381, and 60609 of the Revenue and Taxation Code.

(9) Prevent the California Earthquake Prediction Evaluation Council, or other body appointed to advise the Director of the Office of Emergency Services or the Governor concerning matters relating to volcanic or earthquake predictions, from holding closed sessions when considering the evaluation of possible predictions.

(g) This article does not prevent either of the following:

(1) The Teachers' Retirement Board or the Board of Administration of the Public Employees' Retirement System from holding closed sessions when considering matters pertaining to the recruitment, appointment, employment, or removal of the chief executive officer or when considering matters pertaining to the recruitment or removal of the Chief Investment Officer of the State Teachers' Retirement System or the Public Employees' Retirement System.

(2) The Commission on Teacher Credentialing from holding closed sessions when considering matters relating to the recruitment, appointment, or removal of its executive director.

(h) This section shall remain in effect only 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.

SEC. 2. Section 11126 is added to the Government Code, to read:

11126. (a) (1) Nothing in this article shall be construed to prevent a state body from holding closed sessions during a regular or special meeting to consider the appointment, employment, evaluation of performance, or dismissal of a public employee or to hear complaints or

charges brought against that employee by another person or employee unless the employee requests a public hearing.

(2) As a condition to holding a closed session on the complaints or charges to consider disciplinary action or to consider dismissal, the employee shall be given written notice of his or her right to have a public hearing, rather than a closed session, and that notice shall be delivered to the employee personally or by mail at least 24 hours before the time for holding a regular or special meeting. If notice is not given, any disciplinary or other action taken against any employee at the closed session shall be null and void.

(3) The state body also may exclude from any public or closed session, during the examination of a witness, any or all other witnesses in the matter being investigated by the state body.

(4) Following the public hearing or closed session, the body may deliberate on the decision to be reached in a closed session.

(b) For the purposes of this section, ''employee'' does not include any person who is elected to, or appointed to a public office by, any state body. However, officers of the California State University who receive compensation for their services, other than per diem and ordinary and necessary expenses, shall, when engaged in that capacity, be considered employees. Furthermore, for purposes of this section, the term employee includes a person exempt from civil service pursuant to subdivision (e) of Section 4 of Article VII of the California Constitution.

(c) Nothing in this article shall be construed to do any of the following:

(1) Prevent state bodies that administer the licensing of persons engaging in businesses or professions from holding closed sessions to prepare, approve, grade, or administer examinations.

(2) Prevent an advisory body of a state body that administers the licensing of persons engaged in businesses or professions from conducting a closed session to discuss matters that the advisory body has found would constitute an unwarranted invasion of the privacy of an individual licensee or applicant if discussed in an open meeting, provided the advisory body does not include a quorum of the members of the state body it advises. Those matters may include review of an applicant's qualifications for licensure and an inquiry specifically related to the state body's enforcement program concerning an individual licensee or applicant where the inquiry occurs prior to the filing of a civil, criminal, or administrative disciplinary action against the licensee or applicant by the state body.

(3) Prohibit a state body from holding a closed session to deliberate on a decision to be reached in a proceeding required to be conducted pursuant to Chapter 5 (commencing with Section 11500) or similar provisions of law.

(4) Grant a right to enter any correctional institution or the grounds of a correctional institution where that right is not otherwise granted by law, nor shall anything in this article be construed to prevent a state body from holding a closed session when considering and acting upon the determination of a term, parole, or release of any individual or other disposition of an individual case, or if public disclosure of the subjects under discussion or consideration is expressly prohibited by statute.

(5) Prevent any closed session to consider the conferring of honorary degrees, or gifts, donations, and bequests that the donor or proposed donor has requested in writing to be kept confidential.

(6) Prevent the Alcoholic Beverage Control Appeals Board from holding a closed session for the purpose of holding a deliberative conference as provided in Section 11125.

(7) (A) Prevent a state body from holding closed sessions with its negotiator prior to the purchase, sale, exchange, or lease of real property by or for the state body to give instructions to its negotiator regarding the price and terms of payment for the purchase, sale, exchange, or lease.

(B) However, prior to the closed session, the state body shall hold an open and public session in which it identifies the real property or real properties that the negotiations may concern and the person or persons with whom its negotiator may negotiate.

(C) For purposes of this paragraph, the negotiator may be a member of the state body.

(D) For purposes of this paragraph, ''lease'' includes renewal or renegotiation of a lease.

(E) Nothing in this paragraph shall preclude a state body from holding a closed session for discussions regarding eminent domain proceedings pursuant to subdivision (e).

(8) Prevent the California Postsecondary Education Commission from holding closed sessions to consider matters pertaining to the appointment or termination of the Director of the California Postsecondary Education Commission.

(9) Prevent the Council for Private Postsecondary and Vocational Education from holding closed sessions to consider matters pertaining to the appointment or termination of the Executive Director of the Council for Private Postsecondary and Vocational Education.

(10) Prevent the Franchise Tax Board from holding closed sessions for the purpose of discussion of confidential tax returns or information the public disclosure of which is prohibited by law, or from considering matters pertaining to the appointment or removal of the Executive Officer of the Franchise Tax Board.

(11) Require the Franchise Tax Board to notice or disclose any confidential tax information considered in closed sessions, or documents executed in connection therewith, the public disclosure of

which is prohibited pursuant to Article 2 (commencing with Section 19542) of Chapter 7 of Part 10.2 of the Revenue and Taxation Code.

(12) Prevent the Board of Corrections from holding closed sessions when considering reports of crime conditions under Section 6027 of the Penal Code.

(13) Prevent the State Air Resources Board from holding closed sessions when considering the proprietary specifications and performance data of manufacturers.

(14) Prevent the State Board of Education or the Superintendent of Public Instruction, or any committee advising the board or the superintendent, from holding closed sessions on those portions of its review of assessment instruments pursuant to Chapter 5 (commencing with Section 60600) of, or pursuant to Chapter 8 (commencing with Section 60850) of, Part 33 of the Education Code during which actual test content is reviewed and discussed. The purpose of this provision is to maintain the confidentiality of the assessments under review.

(15) Prevent the California Integrated Waste Management Board or its auxiliary committees from holding closed sessions for the purpose of discussing confidential tax returns, discussing trade secrets or confidential or proprietary information in its possession, or discussing other data, the public disclosure of which is prohibited by law.

(16) Prevent a state body that invests retirement, pension, or endowment funds from holding closed sessions when considering investment decisions. For purposes of consideration of shareholder voting on corporate stocks held by the state body, closed sessions for the purposes of voting may be held only with respect to election of corporate directors, election of independent auditors, and other financial issues that could have a material effect on the net income of the corporation. For the purpose of real property investment decisions that may be considered in a closed session pursuant to this paragraph, a state body shall also be exempt from the provisions of paragraph (7) relating to the identification of real properties prior to the closed session.

(17) Prevent a state body, or boards, commissions, administrative officers, or other representatives that may properly be designated by law or by a state body, from holding closed sessions with its representatives in discharging its responsibilities under Chapter 10 (commencing with Section 3500), Chapter 10.3 (commencing with Section 3512), Chapter 10.5 (commencing with Section 3525), or Chapter 10.7 (commencing of Section 3540) of Division 4 of Title 1 as the sessions relate to salaries, salary schedules, or compensation paid in the form of fringe benefits. For the purposes enumerated in the preceding sentence, a state body may also meet with a state conciliator who has intervened in the proceedings.

(d) (1) Notwithstanding any other provision of law, any meeting of the Public Utilities Commission at which the rates of entities under the commission's jurisdiction are changed shall be open and public.

(2) Nothing in this article shall be construed to prevent the Public Utilities Commission from holding closed sessions to deliberate on the institution of proceedings, or disciplinary actions against any person or entity under the jurisdiction of the commission.

(e) (1) Nothing in this article shall be construed to prevent a state body, based on the advice of its legal counsel, from holding a closed session to confer with, or receive advice from, its legal counsel regarding pending litigation when discussion in open session concerning those matters would prejudice the position of the state body in the litigation.

(2) For purposes of this article, all expressions of the lawyer-client privilege other than those provided in this subdivision are hereby abrogated. This subdivision is the exclusive expression of the lawyer-client privilege for purposes of conducting closed session meetings pursuant to this article. For purposes of this subdivision, litigation shall be considered pending when any of the following circumstances exist:

(A) An adjudicatory proceeding before a court, an administrative body exercising its adjudicatory authority, a hearing officer, or an arbitrator, to which the state body is a party, has been initiated formally.

(B) (i) A point has been reached where, in the opinion of the state body on the advice of its legal counsel, based on existing facts and circumstances, there is a significant exposure to litigation against the state body.

(ii) Based on existing facts and circumstances, the state body is meeting only to decide whether a closed session is authorized pursuant to clause (i).

(C) (i) Based on existing facts and circumstances, the state body has decided to initiate or is deciding whether to initiate litigation.

(ii) The legal counsel of the state body shall prepare and submit to it a memorandum stating the specific reasons and legal authority for the closed session. If the closed session is pursuant to paragraph (1), the memorandum shall include the title of the litigation. If the closed session is pursuant to subparagraph (A) or (B), the memorandum shall include the existing facts and circumstances on which it is based. The legal counsel shall submit the memorandum to the state body prior to the closed session, if feasible, and in any case no later than one week after the closed session. The memorandum shall be exempt from disclosure pursuant to Section 6254.25.

(iii) For purposes of this subdivision, ''litigation'' includes any adjudicatory proceeding, including eminent domain, before a court,

administrative body exercising its adjudicatory authority, hearing officer, or arbitrator.

(iv) Disclosure of a memorandum required under this subdivision shall not be deemed as a waiver of the lawyer-client privilege, as provided for under Article 3 (commencing with Section 950) of Chapter 4 of Division 8 of the Evidence Code.

(f) In addition to subdivisions (a), (b), and (c), nothing in this article shall be construed to do any of the following:

(1) Prevent a state body operating under a joint powers agreement for insurance pooling from holding a closed session to discuss a claim for the payment of tort liability or public liability losses incurred by the state body or any member agency under the joint powers agreement.

(2) Prevent the examining committee established by the State Board of Forestry and Fire Protection, pursuant to Section 763 of the Public Resources Code, from conducting a closed session to consider disciplinary action against an individual professional forester prior to the filing of an accusation against the forester pursuant to Section 11503.

(3) Prevent an administrative committee established by the California Board of Accountancy pursuant to Section 5020 of the Business and Professions Code from conducting a closed session to consider disciplinary action against an individual accountant prior to the filing of an accusation against the accountant pursuant to Section 11503. Nothing in this article shall be construed to prevent an examining committee established by the California Board of Accountancy pursuant to Section 5023 of the Business and Professions Code from conducting a closed hearing to interview an individual applicant or accountant regarding the applicant's qualifications.

(4) Prevent a state body, as defined in subdivision (b) of Section 11121, from conducting a closed session to consider any matter that properly could be considered in closed session by the state body whose authority it exercises.

(5) Prevent a state body, as defined in subdivision (d) of Section 11121, from conducting a closed session to consider any matter that properly could be considered in a closed session by the body defined as a state body pursuant to subdivision (a) or (b) of Section 11121.

(6) Prevent a state body, as defined in subdivision (c) of Section 11121, from conducting a closed session to consider any matter that properly could be considered in a closed session by the state body it advises.

(7) Prevent the State Board of Equalization from holding closed sessions for either of the following:

(A) When considering matters pertaining to the appointment or removal of the Executive Secretary of the State Board of Equalization.

(B) For the purpose of hearing confidential taxpayer appeals or data, the public disclosure of which is prohibited by law.

(8) Require the State Board of Equalization to disclose any action taken in closed session or documents executed in connection with that action, the public disclosure of which is prohibited by law pursuant to Sections 15619 and 15641 of this code and Sections 833, 7056, 8255, 9255, 11655, 30455, 32455, 38705, 38706, 43651, 45982, 46751, 50159, 55381, and 60609 of the Revenue and Taxation Code.

(9) Prevent the California Earthquake Prediction Evaluation Council, or other body appointed to advise the Director of the Office of Emergency Services or the Governor concerning matters relating to volcanic or earthquake predictions, from holding closed sessions when considering the evaluation of possible predictions.

(g) This article does not prevent either of the following:

(1) The Teachers' Retirement Board or the Board of Administration of the Public Employees' Retirement System from holding closed sessions when considering matters pertaining to the recruitment, appointment, employment, or removal of the chief executive officer or when considering matters pertaining to the recruitment or removal of the Chief Investment Officer of the State Teachers' Retirement System or the Public Employees' Retirement System.

(2) The Commission on Teacher Credentialing from holding closed sessions when considering matters relating to the recruitment, appointment, or removal of its executive director.

(h) This section shall become operative on January 1, 2006.

CHAPTER 1114

An act to amend Section 101230 of the Health and Safety Code, relating to public health.

[Approved by Governor September 29, 2002. Filed with Secretary of State September 29, 2002.]

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

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

(a) Disease control, surveillance, and epidemiology are well recognized core local agreement public health functions, serving as integral components of the state's public safety network.

(b) Counties rely on local public health agencies to detect and respond effectively to significant threats, including major outbreaks of infectious

disease, pathogens resistant to antimicrobial agents, and the acts of bioterrorism.

(c) California's public health infrastructure is lacking in its ability to respond to biological threats or other emergencies. The system has been allowed to atrophy over the past several decades, leaving the public more susceptible to serious outbreaks of infectious disease.

(d) Threats of emerging infections and bioterrorism could be addressed more effectively with adequate funding infused into the public health system. Additional ongoing resources are needed to train additional public health staff, expand information and communication systems, and enhance public health laboratory capacity.

(e) State and local public health departments require additional resources and funding to enhance their ability to respond to and prepare for future potential acts of biological terrorism or public health emergencies.

SEC. 2. Section 101230 of the Health and Safety Code is amended to read:

101230. From the appropriation made for the purposes of this article, allocation shall be made to the administrative bodies of qualifying local health jurisdictions described as public health administrative organizations in Section 101185 in the following manner:

(a) A basic allotment as follows:

To the administrative bodies of local health jurisdictions, a basic allotment of one hundred thousand dollars ($100,000) per local health jurisdiction or $0.212426630 per capita, whichever is greater, subject to the availability of funds appropriated in the annual Budget Act or some other act.

The population estimates used for the calculation of the per capita allotment shall be based on the Department of Finance's E-1 Report, ''City/County Population Estimates with Annual Percentage Changes'' as of January 1 of the previous fiscal year. However, if within a county there are one or more city health jurisdictions, the county shall subtract the population of the city or cities from the county total population for purposes of calculating the per capita total. If the amounts appropriated are insufficient to fully fund the allocations specified in this subdivision, the state department shall prorate and adjust each local health jurisdiction's allocation using the same percentage that each local health jurisdiction's allocation represents to the total appropriation under the allocation methodology specified in this subdivision.

(b) A per capita allotment, determined as follows:

After deducting the amounts allowed for the basic allotment as provided in subdivision (a), the balance of the appropriation, if any, shall be allotted on a per capita basis to the administrative body of each local health jurisdiction in the proportion that the population of that local

health jurisdiction bears to the population of all qualified local health jurisdictions of the state.

(c) Beginning in the 1998–99 fiscal year, funds appropriated for the purposes of this article shall be used to supplement existing levels of the services described in subdivision (d) provided by qualifying participating local health jurisdictions. As part of a county's or city's annual realignment trust fund report to the Controller, a participating county or city shall annually certify to the Controller that it has deposited county or city funds equal to or exceeding the amount described in subdivisions (a) and (b) of Section 17608.10 of the Welfare and Institutions Code. The county or city shall not be required to submit any additional reports or modifications to existing reports to document compliance with this subdivision. Funds shall be disbursed quarterly in advance to local health jurisdictions beginning July 1, 1998. If a county or city does not accept its allocation, any unallocated funds provided under this section shall be redistributed according to subdivision (b) to the participating counties and cities that remain.

(d) Funds shall be used for the following:

(1) Communicable disease control activities. Communicable disease control activities shall include, but not be limited to, communicable disease prevention, epidemiologic services, public health laboratory identification, surveillance, immunizations, followup care for sexually transmitted disease and tuberculosis control, and support services. Communicable disease control activities may include:

(A) Training of local public health, laboratory, environmental, and emergency medical services staff, including first responders, and the local medical community.

(B) Acquisition of communication and data systems necessary for effective disease tracking.

(C) Acquisition of protective equipment and other equipment and materials essential for communicable disease control activities.

(2) Community and public health surveillance activities. These activities shall include, but not be limited to, epidemiological analyses, and investigating, monitoring, and controlling illnesses due to natural or intentional biological, chemical, or other health threats.

(e) Funds also may be used for activities that increase the capacity of local public health jurisdictions to respond to potential biological and chemical terrorist threats, in the areas of communicable disease surveillance and control, public health laboratories, environmental health, and linkages to emergency medical services agencies.

(f) Funds shall not be used for medical care services, including jail medical care treatment, except as necessary for purposes of subdivision (d).

CHAPTER 1115

An act to amend Sections 2341 and 2854 of, and to add Section 1513.2 to, the Probate Code, and to amend Sections 366.4 and 11405 of the Welfare and Institutions Code, relating to conservators and guardians.

[Approved by Governor September 30, 2002. Filed with Secretary of State September 30, 2002.]

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

SECTION 1. The Legislature finds and declares as follows:

(a) Children who are in foster care or at risk of entering foster care because their parents are unable to provide care and supervision are in need of stable and permanent relationships with responsible adult caregivers. When neither reunification with the parent nor adoption is available as a permanent plan for the child, legal guardianship can provide the safety and security of a permanent home for the child. While many relatives become legal guardians of foster children, foster parents are frequently willing to commit to becoming guardians of foster children in their care. Thus, foster parents are a valuable resource for the provision of permanency and stability for children who cannot be returned to their parents.

(b) Research shows that foster parents will often commit to becoming legal guardians for sibling groups of two or more foster children, thus ensuring that important sibling relationships are preserved. The maintenance of sibling relationships, as described in Section 16002 of the Welfare and Institutions Code, is a public policy priority.

(c) A recent change to Section 2341 of the Probate Code now requires as of January 1, 2000, that all ''private professional guardians'' register with the Statewide Registry and reregister every three years thereafter, and be subject to the payment of a registration and reregistration fee. ''Private professional guardians'' are defined as all unrelated persons appointed as guardians of the person, the estate, or both the person and the estate of two or more wards. This fee has been initially established at three hundred eighty-five dollars ($385) every three years.

(d) This required registration fee presents a financial hardship for existing foster parents who are guardians of two or more former foster

children, and acts as a financial deterrent to foster parents considering guardianship for sibling groups in their care.

(e) Certain nonrelated adults who are appointed guardians of the person of foster children or children who are at risk of entry into foster care by juvenile or probate court are not the intended population to be monitored by the Statewide Registry. When nonrelated guardians are in receipt of assessment and case management services by the county welfare department pursuant to Section 11405 of the Welfare and Institutions Code there are sufficient safeguards in place to monitor the suitability and appropriateness of those nonrelated guardians of former foster care children or those children at risk of foster care placement.

(f) Therefore, it is the intent of the Legislature to exempt from the Statewide Registry those nonrelated guardians of the person of minors who were appointed by the juvenile court pursuant to Section 366.26 of the Welfare and Institutions Code, or appointed by the probate court pursuant to Section 1514 of the Probate Code and in receipt of AFDC-FC payments and case management services from the county welfare department, as evidenced by a Notice of Action of AFDC-FC eligibility.

SEC. 2. Section 1513.2 is added to the Probate Code, to read:

1513.2. (a) To the extent resources are available, the court shall implement procedures, as described in this section, to ensure that every guardian annually completes and returns to the court a status report, including the statement described in subdivision (b). A guardian who willfully submits any material information required by the form which he or she knows to be false shall be guilty of a misdemeanor. Not later than one month prior to the date the status report is required to be returned, the clerk of the court shall mail to the guardian by first-class mail a notice informing the guardian that he or she is required to complete and return the status report to the court. The clerk shall enclose with the letter a blank status report form for the guardian to complete and return by mail. If the status report is not completed and returned as required, or if the court finds, after a status report has been completed and returned, that further information is needed, the court shall attempt to obtain the information required in the report from the guardian or other sources. If the court is unable to obtain this information within 30 days after the date the status report is due, the court shall either order the guardian to make himself or herself available to the investigator for purposes of investigation of the guardianship, or to show cause why the guardian should not be removed.

(b) The Judicial Council shall develop a form for the status report. The form shall include the following statement: ''A guardian who willfully submits any material information required by this form which he or she knows to be false is guilty of a misdemeanor.'' The form shall request information the Judicial Council deems necessary to determine

the status of the guardianship, including, but not limited to, the following:

(1) The guardian's present address.

(2) The name and birth date of the child under guardianship.

(3) The name of the school in which the child is enrolled, if any.

(4) If the child is not in the guardian's home, the name, relationship, address, and telephone number of the person or persons with whom the child resides.

(5) If the child is not in the guardian's home, why the child was moved.

(c) The report authorized by this section is confidential and shall only be made available to persons who have been served in the proceedings or their attorneys. The clerk of the court shall implement procedures for the limitation of the report exclusively to persons entitled to its receipt.

(d) The Judicial Council shall report to the Legislature no later than December 31, 2004, regarding the costs and benefits of utilizing the annual status report.

SEC. 3. Section 2341 of the Probate Code is amended to read:

2341. (a) As used in this article, ''private professional conservator'' means a person or entity appointed as conservator of the person or estate, or both, of two or more conservatees at the same time who are not related to the conservator by blood or marriage, except a bank or other entity authorized to conduct the business of a trust company, or any public officer or public agency including the public guardian, public conservator, or other agency of the State of California. In the case of an entity, all natural persons who are authorized by the entity to perform the functions of a conservator shall comply with this article. The court may, at its discretion, require any person who is the conservator for only one conservatee not related to the conservator by blood or marriage to comply with this article, and in that case, references in this article to a ''private professional conservator'' includes those persons.

(b) As used in this article, ''private professional guardian'' means a person or entity appointed as guardian of the person or estate, or both, of two or more wards at the same time who are not related to the guardian by blood or marriage, except a bank or other entity authorized to conduct the business of a trust company, or any public officer or public agency including the public guardian, public conservator, or other agency of the State of California. In the case of an entity, all natural persons who are authorized by the entity to perform the functions of a guardian shall comply with this article. The court may, at its discretion, require any person who is the guardian for only one ward not related to the guardian by blood or marriage to comply with this article, and in that case,

references in this article to a ''private professional guardian'' includes those persons.

As used in this article, ''private professional guardian'' does not include a nonrelated guardian of the person of a minor appointed by the court, where the appointment results from the selection of a permanency plan for a dependent child or ward pursuant to Section 366.26 of the Welfare and Institutions Code. It also does not include a nonrelated guardian of the person of a minor appointed by the court pursuant to Section 1514 if that child is in receipt of AFDC-FC payments and case management services from the county welfare department, as evidenced by a Notice of Action of AFDC-FC eligibility.

(c) As used in this article, ''private professional trustee'' means a nonprofit charitable corporation appointed as trustee pursuant to Section 15604.

SEC. 4. Section 2854 of the Probate Code is amended to read:

2854. (a) This chapter does not apply to any public conservator, public guardian, or to any conservator or guardian who is related to the conservatee or ward by blood, marriage, or adoption. This chapter does not apply to any person who is not required to file information with the county clerk pursuant to Section 2340, to any person or entity subject to the oversight of a local government, including an employee of a city, county, or city and county, or to any person or entity subject to the oversight of the state or federal government, including a supervised financial institution.

(b) This chapter does not apply to any conservator who resided in the same home with the conservatee immediately prior to the condition or event that gave rise to the necessity of a conservatorship. This subdivision does not create any order or preference of appointment, but simply exempts a conservator described by this subdivision from registration.

(c) This chapter does not apply to a nonrelated guardian of the person of a minor appointed by the court as the result of the selection of a permanency plan for a dependent child or ward pursuant to Section 366.26 of the Welfare and Institutions Code. It also does not include a nonrelated guardian of the person of a minor appointed pursuant to Section 1514 if that child is in receipt of AFDC-FC payments and case management services from the county welfare department, as evidenced by a Notice of Action of AFDC-FC eligibility.

SEC. 5. Section 366.4 of the Welfare and Institutions Code is amended to read:

366.4. (a) Any minor for whom a guardianship has been established resulting from the selection or implementation of a permanent plan pursuant to Section 366.26 is within the jurisdiction of the juvenile court. For those minors, Part 2 (commencing with Section

1500) of Division 4 of the Probate Code, relating to guardianship, shall not apply. If no specific provision of this code or the California Rules of Court is applicable, the provisions applicable to the administration of estates under Part 4 (commencing with Section 2100) of Division 4 of the Probate Code govern so far as they are applicable to like situations.

(b) Nonrelated legal guardians of the person of a minor established as a result of a permanent plan selected pursuant to Section 366.26 shall be exempt from the provisions of Sections 2850 and 2851 of the Probate Code.

SEC. 6. Section 11405 of the Welfare and Institutions Code is amended to read:

11405. (a) AFDC-FC shall be paid to an otherwise eligible child living with a nonrelated legal guardian, provided that the legal guardian cooperates with the county welfare department in all of the following:

(1) Developing a written assessment of the child's needs.

(2) Updating the assessment no less frequently than once every six months.

(3) Carrying out the case plan developed by the county.

(b) When AFDC-FC is applied for on behalf of a child living with a nonrelated legal guardian the county welfare department shall do all of the following:

(1) Develop a written assessment of the child's needs.

(2) Update those assessments no less frequently than once every six months.

(3) Develop a case plan that specifies how the problems identified in the assessment are to be addressed.

(4) Make visits to the child as often as appropriate, but in no event less often than once every six months.

(c) Where the child is a parent and has a child living with him or her in the same eligible facility, the assessment required by paragraph (1) of subdivision (a) shall include the needs of his or her child.

(d) Nonrelated legal guardians of eligible children who are in receipt of AFDC-FC payments described in this section shall be exempt from the requirement to register with the Statewide Registry of Private Professional Guardians pursuant to Sections 2850 and 2851 of the Probate Code.

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.

CHAPTER 1116

An act to amend Section 10153.2 of, to amend, repeal, and add Section 10170.5 of, and to add and repeal Part 4 (commencing with Section 11500) of Division 4 of the Business and Professions Code, and to amend Sections 1363.5 and 1365 of the Civil Code, relating to common interest development managers.

[Approved by Governor September 30, 2002. Filed with Secretary of State September 30, 2002.]

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

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

(a) A large number of Californians find housing in the more than 33,000 common interest developments in this state. California common interest developments contain over three million homes, that house more than nine million people.

(b) Homes in common interest developments are no different than homes that are not in that they most often represent the owner's single largest lifetime investment.

(c) The management and operation of common interest developments is governed by a complex set of laws contained in the Civil, Corporations, Government, and Health and Safety Codes, and in federal statutes. In addition to possessing an understanding of this significant body of law, the successful professional common interest development management and the operations of a common interest development require fundamental skills in subjects including, but not limited to, finance accounting and bookkeeping, contract administration, human resources, and parliamentary procedure.

(d) Common interest development managers are often delegated the authority, by the governing body of the common interest development, to collect and disburse substantial sums of money annually in

homeowner assessments, for the purpose of maintaining and operating the community.

(e) The growth in common interest developments, coupled with the addition of governing statutes, has created a demand for individuals who possess the necessary skills and technical expertise to act as common interest development managers.

(f) Currently, individuals hired to manage common interest developments are not recognized by law as possessing any educational or management skill standards if they identify themselves as ''certified.'' In essence, any person can call himself or herself a certified common interest development manager without having received specific education and training in managing a common interest development.

(g) Those who reside in common interest developments in this state, or who participate as board members of homeowner associations of common interest developments, need to be assured that common interest development managers who refer to themselves as ''certified'' have met certain minimal education requirements and standards if they offer their services to California common interest developments as a ''certified'' common interest development manager.

SEC. 2. Section 10153.2 of the Business and Professions Code is amended to read:

10153.2. (a) An applicant to take the examination for an original real estate broker license shall also submit evidence, satisfactory to the commissioner, of successful completion, at an accredited institution, of:

(1) A three-semester unit course, or the quarter equivalent thereof, in each of the following:

(A) Real estate practice.

(B) Legal aspects of real estate.

(C) Real estate appraisal.

(D) Real estate financing.

(E) Real estate economics or accounting.

(2) A three-semester unit course, or the quarter equivalent thereof, in three of the following:

(A) Advanced legal aspects of real estate.

(B) Advanced real estate finance.

(C) Advanced real estate appraisal.

(D) Business law.

(E) Escrows.

(F) Real estate principles.

(G) Property management.

(H) Real estate office administration.

(I) Mortgage loan brokering and lending.

(J) Computer applications in real estate.

(K) On and after July 1, 2004, California law that relates to common interest developments, including, but not limited to, topics addressed in the Davis-Stirling Common Interest Development Act (Title 6 (commencing with Section 1350) of Part 4 of Division 2 of the Civil Code).

(b) The commissioner shall waive the requirements of this section for an applicant who is a member of the State Bar of California and shall waive the requirements for which an applicant has successfully completed an equivalent course of study as determined under Section 10153.5.

(c) The commissioner shall extend credit under this section for any course completed to satisfy requirements of Section 10153.3 or 10153.4.

SEC. 3. Section 10170.5 of the Business and Professions Code is amended to read:

10170.5. (a) Except as otherwise provided in Sections 10153.4 and 10170.8, no real estate license shall be renewed unless the commissioner finds that the applicant for license renewal has, during the four-year period preceding the renewal application, successfully completed the 45 clock hours of education provided for in Section 10170.4, including all of the following:

(1) A three-hour course in ethics, professional conduct, and legal aspects of real estate, which shall include, but not be limited to, relevant legislation, regulations, articles, reports, studies, court decisions, treatises, and information of current interest.

(2) A three-hour course in agency relationships and duties in a real estate brokerage practice, including instruction in the disclosures to be made and the confidences to be kept in the various agency relationships between licensees and the parties to real estate transactions.

(3) A three-hour course in trust fund accounting and handling.

(4) A three-hour course in fair housing.

(5) Not less than 18 clock hours of courses or programs related to consumer protection, and designated by the commissioner as satisfying this purpose in his or her approval of the offering of these courses or programs, which shall include, but not be limited to, forms of real estate financing relevant to serving consumers in the marketplace, land use regulation and control, pertinent consumer disclosures, agency relationships, capital formation for real estate development, fair practices in real estate, appraisal and valuation techniques, landlord-tenant relationships, energy conservation, environmental regulation and consideration, taxation as it relates to consumer decisions in real estate transactions, probate and similar disposition of real property, governmental programs such as revenue bond activities, redevelopment, and related programs, business opportunities, mineral, oil, and gas conveyancing, and California law that relates to managing

community associations that own, operate, and maintain property within common interest developments, including, but not limited to, management, maintenance, and financial matters addressed in the Davis-Stirling Common Interest Development Act.

(6) Other courses and programs that will enable a licensee to achieve a high level of competence in serving the objectives of consumers who may engage the services of licensees to secure the transfer, financing, or similar objectives with respect to real property, including organizational and management techniques that will significantly contribute to this goal.

(b) Except as otherwise provided in Section 10170.8, no real estate license shall be renewed for a licensee who already has renewed under subdivision (a), unless the commissioner finds that the applicant for license renewal has, during the four-year period preceding the renewal application, successfully completed the 45 clock hours of education provided for in Section 10170.4, including a six-hour update survey course that covers the subject areas specified in paragraphs (1) to (4), inclusive, of subdivision (a).

(c) Any denial of a license pursuant to this section shall be subject to Section 10100.

(d) This section shall remain in effect only until July 1, 2003, and as of January 1, 2004, is repealed, unless a later enacted statute that is enacted before July 1, 2003, deletes or extends the dates on which it becomes inoperative or is repealed.

SEC. 4. Section 10170.5 is added to the Business and Professions Code, to read:

10170.5. (a) Except as otherwise provided in Sections 10153.4 and 10170.8, no real estate license shall be renewed unless the commissioner finds that the applicant for license renewal has, during the four-year period preceding the renewal application, successfully completed the 45 clock hours of education provided for in Section 10170.4, including all of the following:

(1) A three-hour course in ethics, professional conduct, and legal aspects of real estate, which shall include, but not be limited to, relevant legislation, regulations, articles, reports, studies, court decisions, treatises, and information of current interest.

(2) A three-hour course in agency relationships and duties in a real estate brokerage practice, including instruction in the disclosures to be made and the confidences to be kept in the various agency relationships between licensees and the parties to real estate transactions.

(3) A three-hour course in trust fund accounting and handling.

(4) A three-hour course in fair housing.

(5) Not less than 18 clock hours of courses or programs related to consumer protection, and designated by the commissioner as satisfying

this purpose in his or her approval of the offering of these courses or programs, which shall include, but not be limited to, forms of real estate financing relevant to serving consumers in the marketplace, land use regulation and control, pertinent consumer disclosures, agency relationships, capital formation for real estate development, fair practices in real estate, appraisal and valuation techniques, landlord-tenant relationships, energy conservation, environmental regulation and consideration, taxation as it relates to consumer decisions in real estate transactions, probate and similar disposition of real property, governmental programs such as revenue bond activities, redevelopment, and related programs, business opportunities, mineral, oil, and gas conveyancing, and California law that relates to managing community associations that own, operate, and maintain property within common interest developments, including, but not limited to, management, maintenance, and financial matters addressed in the Davis-Stirling Common Interest Development Act.

(6) Other courses and programs that will enable a licensee to achieve a high level of competence in serving the objectives of consumers who may engage the services of licensees to secure the transfer, financing, or similar objectives with respect to real property, including organizational and management techniques that will significantly contribute to this goal.

(b) Except as otherwise provided in Section 10170.8, no real estate license shall be renewed for a licensee who already has renewed under subdivision (a), unless the commissioner finds that the applicant for license renewal has, during the four-year period preceding the renewal application, successfully completed the 45 clock hours of education provided for in Section 10170.4, including a six-hour update survey course that covers the subject areas specified in paragraphs (1) to (4), inclusive, of subdivision (a).

(c) Any denial of a license pursuant to this section shall be subject to Section 10100.

(d) For purposes of this section, ''successful completion'' of a course described in paragraphs (1) to (4), inclusive, of subdivision (a) means the passing of a final examination.

(e) This section shall become operative on July 1, 2003.

SEC. 5. Part 4 (commencing with Section 11500) is added to Division 4 of the Business and Professions Code, to read:

PART 4. CERTIFIED COMMON INTEREST DEVELOPMENT MANAGER

CHAPTER 1. PURPOSE AND DEFINITIONS

11500. For purposes of this chapter, the following definitions apply:

(a) ''Common interest development'' means a residential development identified in subdivision (c) of Section 1351 of the Civil Code.

(b) ''Community association'' means a nonprofit corporation or unincorporated association created for the purpose of managing a common interest development. A community association is an ''association'' as defined in subdivision (a) of Section 1351 of the Civil Code.

(c) ''Financial services'' means an act performed or offered to be performed, for compensation, for a community association including, but not limited to, the preparation of internal unaudited financial statements, internal accounting and bookkeeping functions, billing of assessments, and related services.

(d) ''Management services'' means an act performed or offered to be performed in an advisory capacity for a community association including, but not limited to, the following:

(1) Administering or supervising the financial or common area assets of a community association or common interest development, at the direction of the community association's governing body.

(2) Implementing resolutions and directives of the board of directors of the community association elected to oversee the operation of a common interest development.

(3) Implementing provisions of governing documents, as defined in Section 1351 of the Civil Code, which govern the operation of the community association or common interest development.

(4) Administering a community association's contracts, including insurance contracts, within the scope of the community association's duties or with other common interest development managers, vendors, contractors, and other third-party providers of goods and services to a community association or common interest development.

11501. (a) ''Common interest development manager'' means an individual who for compensation, or in expectation of compensation, provides or contracts to provide management or financial services, or represents himself or herself to act in the capacity of providing management or financial services to a community association. Notwithstanding any other provision of law, an individual may not be required to obtain a real estate or broker's license in order to perform the

services of a common interest development manager to a community association.

(b) ''Common interest development manager'' also means any of the following:

(1) An individual who is a partner in a partnership, a shareholder or officer in a corporation, or who, in any other business entity acts in a capacity to advise, supervise, and direct the activity of a registrant or provisional registrant, or who acts as a principal on behalf of a company that provides the services of a common interest development manager.

(2) An individual operating under a fictitious business name who provides the services of a common interest development manager.

This section may not be construed to require a community association to hire for compensation a common interest development manager, unless required to do so by the governing documents of the common interest development. Nothing in this part shall be construed to supersede any law that requires a license, permit, or any other form of registration, to provide management or financial services. Nothing in this section shall preclude a licensee of the California Board of Accountancy to provide financial services to a community association within the scope of his or her license in addition to the preparation of reviewed and audited financial statements and the preparation of the community association's tax returns.

CHAPTER 2. CERTIFIED COMMON INTEREST DEVELOPMENT MANAGER

11502. In order to be called a ''certified common interest development manager,'' the person shall meet all of the following:

(a) Within the previous five years has passed a knowledge, skills, and aptitude examination or has achieved a certification designation endorsed by a professional association for community association managers and has received instruction in California law pursuant to paragraph (1) of subdivision (b) within the last five years. The course related competency examination or examinations and education provided to a ''certified common interest development manager by any professional association for common interest development managers that meets the requirements of subdivision (c) of Section 11502, or any postsecondary educational institution'' shall be developed and administered in a manner consistent with standards and requirements set forth by the American Educational Research Association's ''Standards for Educational and Psychological Testing,'' and the Equal Employment Opportunity Commission's ''Uniform Guidelines for Employee Selection Procedures,'' the Civil Rights Act of 1991, and the Americans with Disabilities Act of 1990, or the course or courses have been

approved as a continuing education course or an equivalent course of study pursuant to the regulations of the Real Estate Commissioner.

(b) Education curriculum shall be no less than a combined 30 hours in coursework described in this subdivision. The examination shall test competence in common interest development management in the following areas:

(1) Instruction in California law that is related to the management of common interest developments, including, but not limited to, the following courses of study:

(A) The topics covered by the Davis-Stirling Common Interest Development Act, contained in Sections 1350 to 1376, inclusive, of the Civil Code, including, but not limited to, the types of California common interest developments, disclosure requirements pertaining to common interest developments, meeting requirements for community association boards of directors and members, financial disclosure and reporting requirements, and access to community association records.

(B) Personnel issues, including, but not limited to, general matters related to independent contractor or employee status, issues related to types of harassment, the Unruh Civil Rights Act, fair employment laws, and the Americans with Disabilities Act.

(C) Risk management as it pertains to common interest development, including, but not limited to, required insurance coverage and preventative maintenance programs.

(D) Property protection, including, but not limited to, general matters relating to hazardous materials such as asbestos, radon and lead, the Vehicle Code, local and municipal regulations, family day care homes, energy conservation, Federal Communications Commission rules and regulations, and solar energy systems.

(E) The business affairs of community associations, including, but not limited to, necessary compliance with all required local, state, and federal laws and treatises.

(F) Basic understanding of governing documents, codes, and regulations relating to the activities and affairs of community associations and common interest developments.

(2) Instruction in general management that is related to the managerial and business skills needed for management of a common interest development, including, but not limited to, the following:

(A) Finance issues, including, but not limited to, budget preparation, management, and administration of community association financial affairs, bankruptcy laws, and assessment collection activities.

(B) Contract negotiation and administration.

(C) Supervision of common interest development employees and staff.

(D) Management of common interest development maintenance programs.

(E) Management and administration of rules, regulations, parliamentary procedures, and architectural standards pertaining to community associations and common interest developments.

(F) Management and administration of common interest development recreational programs and facilities.

(G) Management and administration of owner and resident communications.

(H) Training and strategic planning for the community association's board of directors and committees, and other activities of residents in a common interest development.

(I) Risk management as it pertains to common interest development properties, activities, and emergency preparedness.

(J) Implementation of community association policies and procedures.

(K) Ethics for common interest development managers.

(L) Professional conduct and standards of practice for common interest development managers.

(M) Current issues relating to common interest developments.

(c) A ''professional association for common interest development managers'' means an organization that meets all of the following:

(1) Has at least 200 individual members or certificants who are common interest development managers in California.

(2) Has been in existence for at least five years.

(3) Operates pursuant to Section 501(c) of the Internal Revenue Code.

(4) Certifies that a common interest development manager has met the criteria set forth in Section 11505 without requiring membership in the association.

(5) Requires adherence to a Code of Professional Ethics and Standards of Practice for certified common interest development managers.

11503. A ''certified common interest development manager'' does not include a common interest development management firm.

CHAPTER 3. DISCLOSURE REQUIREMENTS

11504. On an annual basis, a person who either provides or contemplates providing the services of a common interest development manager to a community association, as defined in Section 11501, shall disclose to the board of directors of the community association the following information:

(a) Whether or not the community interest development manager is certified, as defined in Section 11502.

(b) The name, address, and telephone number of the professional association that certified the common interest development manager, the date the manager was certified, and the status of the certification.

(c) The location of his or her primary office.

(d) Prior to entering into or renewing a contract with a community association, the common interest development manager, whether certified or not, shall disclose to the governing board of the community association whether the fidelity insurance of the community manager or his or her employer covers the operating and reserve funds of the community association. This requirement may not be construed to compel or require a community association or common interest development manager to require fidelity insurance.

This section may not preclude a common interest development manager from disclosing information as required in Section 1363.1 of the Civil Code.

CHAPTER 4. UNFAIR BUSINESS PRACTICES

11505. It is an unfair business practice for a common interest development manager, a company that employs the manager, or a company that is controlled by a company that also has a financial interest in a company employing a manager, to do any of the following:

(a) On or after July 1, 2003, to hold oneself out or use the title of ''certified common interest development manager'' or any other term that implies or suggests that the person is certified as a common interest development manager without meeting the requirements of Section 11502.

(b) To state or advertise that he or she is certified, registered, or licensed by a governmental agency to perform the functions of a certified common interest development manager.

(c) To state or advertise a registration or license number, unless the license or registration is specified by a statute, regulation, or ordinance.

(d) To fail to disclose or misrepresent any item to be disclosed in Section 11504 of this code, or Section 1363.1 of the Civil Code.

CHAPTER 5. SUNSET REVIEW

11506. This part shall be subject to the review required by Division 1.2 (commencing with Section 473). This part shall remain in effect only until January 1, 2008, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2008, deletes or extends that date.

SEC. 6. Section 1363.5 of the Civil Code is amended to read:

1363.5. (a) The articles of incorporation of any common interest development association filed with the Secretary of State on or after January 1, 1995, shall include a statement that shall be in addition to the statement of purposes of the corporation, and that (1) identifies the corporation as an association formed to manage a common interest development under the Davis-Stirling Common Interest Development Act, (2) states the business or corporate office of the association, if any, and, if the office is not on the site of the common interest development, states the nine-digit ZIP Code, front street, and nearest cross street for the physical location of the common interest development, and (3) states the name and address of the association's managing agent, as defined in Section 1363.1, if any, and whether the association's managing agent is certified pursuant to Section 11502 of the Business and Professions Code.

(b) The statement of principal business activity contained in the annual statement filed by an incorporated association with the Secretary of State pursuant to Section 1502 of the Corporations Code shall also contain the statement specified in subdivision (a).

SEC. 7. Section 1365 of the Civil Code is amended to read:

1365. Unless the governing documents impose more stringent standards, the association shall prepare and distribute to all of its members the following documents:

(a) A pro forma operating budget, which shall include all of the following:

(1) The estimated revenue and expenses on an accrual basis.

(2) A summary of the association's reserves based upon the most recent review or study conducted pursuant to Section 1365.5, which shall be printed in boldface type and include all of the following:

(A) The current estimated replacement cost, estimated remaining life, and estimated useful life of each major component.

(B) As of the end of the fiscal year for which the study is prepared:

(i) The current estimate of the amount of cash reserves necessary to repair, replace, restore, or maintain the major components.

(ii) The current amount of accumulated cash reserves actually set aside to repair, replace, restore, or maintain major components.

(iii) If applicable, the amount of funds received from either a compensatory damage award or settlement to an association from any person or entity for injuries to property, real or personal, arising out of any construction or design defects, and the expenditure or disposition of funds, including the amounts expended for the direct and indirect costs of repair of construction or design defects. These amounts shall be reported at the end of the fiscal year for which the study is prepared as separate line items under cash reserves pursuant to clause (ii). In lieu of

complying with the requirements set forth in this clause, an association that is obligated to issue a review of their financial statement pursuant to subdivision (b) may include in the review a statement containing all of the information required by this clause.

(C) The percentage that the amount determined for purposes of clause (ii) subparagraph (B) equals the amount determined for purposes of clause (i) of subparagraph (B).

(3) A statement as to whether the board of directors of the association has determined or anticipates that the levy of one or more special assessments will be required to repair, replace, or restore any major component or to provide adequate reserves therefor.

(4) A general statement addressing the procedures used for the calculation and establishment of those reserves to defray the future repair, replacement, or additions to those major components that the association is obligated to maintain.

The summary of the association's reserves disclosed pursuant to paragraph (2) shall not be admissible in evidence to show improper financial management of an association, provided that other relevant and competent evidence of the financial condition of the association is not made inadmissible by this provision.

A copy of the operating budget shall be annually distributed not less than 45 days nor more than 60 days prior to the beginning of the association's fiscal year.

(b) A review of the financial statement of the association shall be prepared in accordance with generally accepted accounting principles by a licensee of the California Board of Accountancy for any fiscal year in which the gross income to the association exceeds seventy-five thousand dollars ($75,000). A copy of the review of the financial statement shall be distributed within 120 days after the close of each fiscal year.

(c) In lieu of the distribution of the pro forma operating budget required by subdivision (a), the board of directors may elect to distribute a summary of the pro forma operating budget to all of its members with a written notice that the pro forma operating budget is available at the business office of the association or at another suitable location within the boundaries of the development, and that copies will be provided upon request and at the expense of the association. If any member requests that a copy of the pro forma operating budget required by subdivision (a) be mailed to the member, the association shall provide the copy to the member by first-class United States mail at the expense of the association and delivered within five days. The written notice that is distributed to each of the association members shall be in at least 10-point boldface type on the front page of the summary of the budget.

(d) A statement describing the association's policies and practices in enforcing lien rights or other legal remedies for default in payment of its

assessments against its members shall be annually delivered to the members during the 60-day period immediately preceding the beginning of the association's fiscal year.

(e) (1) A summary of the association's property, general liability, and earthquake and flood and fidelity insurance policies, which shall be distributed within 60 days preceding the beginning of the association's fiscal year, that includes all of the following information about each policy:

(A) The name of the insurer.

(B) The type of insurance.

(C) The policy limits of the insurance.

(D) The amount of deductibles, if any.

(2) The association shall, as soon as reasonably practicable, notify its members by first-class mail if any of the policies described in paragraph (1) have lapsed, been canceled, and are not immediately renewed, restored, or replaced, or if there is a significant change, such as a reduction in coverage or limits or an increase in the deductible, as to any of those policies. If the association receives any notice of nonrenewal of a policy described in paragraph (1), the association shall immediately notify its members if replacement coverage will not be in effect by the date the existing coverage will lapse.

(3) To the extent that any of the information required to be disclosed pursuant to paragraph (1) is specified in the insurance policy declaration page, the association may meet its obligation to disclose that information by making copies of that page and distributing it to all of its members.

(4) The summary distributed pursuant to paragraph (1) shall contain, in at least 10-point boldface type, the following statement: ''This summary of the association's policies of insurance provides only certain information, as required by subdivision (e) of Section 1365 of the Civil Code, and should not be considered a substitute for the complete policy terms and conditions contained in the actual policies of insurance. Any association member may, upon request and provision of reasonable notice, review the association's insurance policies and, upon request and payment of reasonable duplication charges, obtain copies of those policies. Although the association maintains the policies of insurance specified in this summary, the association's policies of insurance may not cover your property, including personal property or, real property improvements to or around your dwelling, or personal injuries or other losses that occur within or around your dwelling. Even if a loss is covered, you may nevertheless be responsible for paying all or a portion of any deductible that applies. Association members should consult with

their individual insurance broker or agent for appropriate additional coverage."

CHAPTER 1117

An act to amend Section 1368 of, and to amend, renumber, and add Section 1363.6 of, the Civil Code, and to amend Sections 12176 and 12191 of the Government Code, relating to common interest developments.

[Approved by Governor September 30, 2002. Filed with Secretary of State September 30, 2002.]

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

SECTION 1. Section 1363.6 of the Civil Code is amended and renumbered to read:

1366.2. (a) In order to facilitate the collection of regular assessments, special assessments, transfer fees, and similar charges, the board of directors of any association is authorized to record a statement or amended statement identifying relevant information for the association. This statement may include any or all of the following information:

(1) The name of the association as shown in the conditions, covenants, and restrictions or the current name of the association, if different.

(2) The name and address of a managing agent or treasurer of the association or other individual or entity authorized to receive assessments and fees imposed by the association.

(3) A daytime telephone number of the authorized party identified in paragraph (2) if a telephone number is available.

(4) A list of separate interests subject to assessment by the association, showing the assessor's parcel number or legal description, or both, of the separate interests.

(5) The recording information identifying the declaration or declarations of covenants, conditions, and restrictions governing the association.

(6) If an amended statement is being recorded, the recording information identifying the prior statement or statements which the amendment is superseding.

(b) The county recorder is authorized to charge a fee for recording the document described in subdivision (a), which fee shall be based upon the

number of pages in the document and the recorder's per-page recording fee.

SEC. 2. Section 1363.6 is added to the Civil Code, to read:

1363.6. (a) To assist with the identification of common interest developments, each association, whether incorporated or unincorporated, shall submit to the Secretary of State, on a form and for a fee not to exceed thirty dollars ($30) that the Secretary of State shall prescribe, the following information concerning the association and the development that it manages:

(1) A statement that the association is formed to manage a common interest development under the Davis-Stirling Common Interest Development Act.

(2) The name of the association.

(3) The street address of the association's onsite office, or, if none, of the responsible officer or managing agent of the association.

(4) The address and either the daytime telephone number or e-mail address of the president of the association, other than the address, telephone number, or e-mail address of the association's onsite office or managing agent of the association.

(5) The name, street address, and daytime telephone number of the association's managing agent, if any.

(6) The county, and if in an incorporated area, the city in which the development is physically located. If the boundaries of the development are physically located in more than one county, each of the counties in which it is located.

(7) If the development is in an unincorporated area, the city closest in proximity to the development.

(8) The nine-digit ZIP Code, front street, and nearest cross street of the physical location of the development.

(9) The type of common interest development, as defined in subdivision (c) of Section 1351, managed by the association.

(10) The number of separate interests, as defined in subdivision (*l*) of Section 1351, in the development.

(b) The association shall submit the information required by this section as follows:

(1) By incorporated associations, within 90 days after the filing of its original articles of incorporation, and thereafter at the time the association files its biennial statement of principle business activity with the Secretary of State pursuant to Section 8210 of the Corporations Code.

(2) By unincorporated associations, in July of 2003, and in that same month biennially thereafter. Upon changing its status to that of a corporation, the association shall comply with the filing deadlines in paragraph (1).

(c) The association shall notify the Secretary of State of any change in the street address of the association's onsite office or of the responsible officer or managing agent of the association in the form and for a fee prescribed by the Secretary of State, within 60 days of the change.

(d) On and after January 1, 2006, the penalty for an incorporated association's noncompliance with the initial or biennial filing requirements of this section shall be suspension of the association's rights, privileges, and powers as a corporation and monetary penalties, to the same extent and in the same manner as suspension and monetary penalties imposed pursuant to Section 8810 of the Corporations Code.

(e) The Secretary of State shall make the information submitted pursuant to paragraph (4) of subdivision (a) available only for governmental purposes and only to members of the Legislature and the Business, Transportation and Housing Agency, upon written request. All other information submitted pursuant to this section shall be subject to public inspection pursuant to the California Public Records Act, Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code. The information submitted pursuant to this section shall be made available for governmental or public inspection, as the case may be, on or before July 1, 2004, and thereafter.

SEC. 3. Section 1368 of the Civil Code is amended to read:

1368. (a) The owner of a separate interest, other than an owner subject to the requirements of Section 11018.6 of the Business and Professions Code, shall, as soon as practicable before transfer of title to the separate interest or execution of a real property sales contract therefor, as defined in Section 2985, provide the following to the prospective purchaser:

(1) A copy of the governing documents of the common interest development, including a copy of the association's articles of incorporation, or, if not incorporated, a statement in writing from an authorized representative of the association that the association is not incorporated.

(2) If there is a restriction in the governing documents limiting the occupancy, residency, or use of a separate interest on the basis of age in a manner different from that provided in Section 51.3, a statement that the restriction is only enforceable to the extent permitted by Section 51.3 and a statement specifying the applicable provisions of Section 51.3.

(3) A copy of the most recent documents distributed pursuant to Section 1365.

(4) A true statement in writing obtained from an authorized representative of the association as to the amount of the association's current regular and special assessments and fees, any assessments levied upon the owner's interest in the common interest development that are unpaid on the date of the statement, and any monetary fines or penalties

levied upon the owner's interest and unpaid on the date of the statement. The statement obtained from an authorized representative shall also include true information on late charges, interest, and costs of collection which, as of the date of the statement, are or may be made a lien upon the owner's interest in a common interest development pursuant to Section 1367.

(5) A copy or a summary of any notice previously sent to the owner pursuant to subdivision (h) of Section 1363 that sets forth any alleged violation of the governing documents that remains unresolved at the time of the request. The notice may not be deemed a waiver of the association's right to enforce the governing documents against the owner or the prospective purchaser of the separate interest with respect to any violation. This paragraph may not be construed to require an association to inspect an owner's separate interest.

(6) A copy of the preliminary list of defects provided to each member of the association pursuant to Section 1375, unless the association and the builder subsequently enter into a settlement agreement or otherwise resolve the matter and the association complies with Section 1375.1. Disclosure of the preliminary list of defects pursuant to this paragraph shall not waive any privilege attached to the document. The preliminary list of defects shall also include a statement that a final determination as to whether the list of defects is accurate and complete has not been made.

(7) A copy of the latest information provided for in Section 1375.1.

(8) Any change in the association's current regular and special assessments and fees, which have been approved by the association's board of directors, but have not become due and payable as of the date disclosure is provided pursuant to this subdivision.

(b) Upon written request, an association shall, within 10 days of the mailing or delivery of the request, provide the owner of a separate interest with a copy of the requested items specified in paragraphs (1) to (7), inclusive, of subdivision (a). The association may charge a fee for this service, which may not exceed the association's reasonable cost to prepare and reproduce the requested items.

(c) An association may not impose or collect any assessment, penalty, or fee in connection with a transfer of title or any other interest except the association's actual costs to change its records and that authorized by subdivision (b).

(d) Any person or entity who willfully violates this section shall be liable to the purchaser of a separate interest which is subject to this section for actual damages occasioned thereby and, in addition, shall pay a civil penalty in an amount not to exceed five hundred dollars ($500). In an action to enforce this liability, the prevailing party shall be awarded reasonable attorneys' fees.

(e) Nothing in this section affects the validity of title to real property transferred in violation of this section.

(f) In addition to the requirements of this section, an owner transferring title to a separate interest shall comply with applicable requirements of Sections 1133 and 1134.

SEC. 3.5. Section 1368 of the Civil Code is amended to read:

1368. (a) The owner of a separate interest, other than an owner subject to the requirements of Section 11018.6 of the Business and Professions Code, shall, as soon as practicable before transfer of title to the separate interest or execution of a real property sales contract therefor, as defined in Section 2985, provide the following to the prospective purchaser:

(1) A copy of the governing documents of the common interest development, including a copy of the association's articles of incorporation, or, if not incorporated, a statement in writing from an authorized representative of the association that the association is not incorporated.

(2) If there is a restriction in the governing documents limiting the occupancy, residency, or use of a separate interest on the basis of age in a manner different from that provided in Section 51.3, a statement that the restriction is only enforceable to the extent permitted by Section 51.3 and a statement specifying the applicable provisions of Section 51.3.

(3) A copy of the most recent documents distributed pursuant to Section 1365.

(4) A true statement in writing obtained from an authorized representative of the association as to the amount of the association's current regular and special assessments and fees, any assessments levied upon the owner's interest in the common interest development that are unpaid on the date of the statement, and any monetary fines or penalties levied upon the owner's interest and unpaid on the date of the statement. The statement obtained from an authorized representative shall also include true information on late charges, interest, and costs of collection which, as of the date of the statement, are or may be made a lien upon the owner's interest in a common interest development pursuant to Section 1367 or 1367.1.

(5) A copy or a summary of any notice previously sent to the owner pursuant to subdivision (h) of Section 1363 that sets forth any alleged violation of the governing documents that remains unresolved at the time of the request. The notice shall not be deemed a waiver of the association's right to enforce the governing documents against the owner or the prospective purchaser of the separate interest with respect to any violation. This paragraph shall not be construed to require an association to inspect an owner's separate interest.

(6) A copy of the preliminary list of defects provided to each member of the association pursuant to Section 1375, unless the association and the builder subsequently enter into a settlement agreement or otherwise resolve the matter and the association complies with Section 1375.1. Disclosure of the preliminary list of defects pursuant to this paragraph shall not waive any privilege attached to the document. The preliminary list of defects shall also include a statement that a final determination as to whether the list of defects is accurate and complete has not been made.

(7) A copy of the latest information provided for in Section 1375.1.

(8) Any change in the association's current regular and special assessments and fees which have been approved by the association's board of directors, but have not become due and payable as of the date disclosure is provided pursuant to this subdivision.

(b) Upon written request, an association shall, within 10 days of the mailing or delivery of the request, provide the owner of a separate interest with a copy of the requested items specified in paragraphs (1) to (8), inclusive, of subdivision (a). The association may charge a fee for this service, which shall not exceed the association's reasonable cost to prepare and reproduce the requested items.

(c) An association shall not impose or collect any assessment, penalty, or fee in connection with a transfer of title or any other interest except the association's actual costs to change its records and that authorized by subdivision (b).

(d) Any person or entity who willfully violates this section shall be liable to the purchaser of a separate interest which is subject to this section for actual damages occasioned thereby and, in addition, shall pay a civil penalty in an amount not to exceed five hundred dollars ($500). In an action to enforce this liability, the prevailing party shall be awarded reasonable attorneys' fees.

(e) Nothing in this section affects the validity of title to real property transferred in violation of this section.

(f) In addition to the requirements of this section, an owner transferring title to a separate interest shall comply with applicable requirements of Sections 1133 and 1134.

SEC. 4. Section 12176 of the Government Code is amended to read:

12176. (a) Commencing July 1, 1992, all fees collected by the Secretary of State's office pursuant to the Business and Professions Code, Civil Code, Code of Civil Procedure, Commercial Code, Corporations Code, Food and Agricultural Code, Harbors and Navigation Code, and this code, excluding Section 81008 of this code, shall be paid into the Secretary of State's Business Fees Fund which was created by former Section 12181 and is hereby continued in existence in the State Treasury for the administration of that portion of the Secretary of State's functions under these codes.

(b) It is the intent of the Legislature that moneys deposited into the Secretary of State's Business Fees Fund shall be used to support the programs from which fees are collected. It is further the intent of the Legislature that fees shall be sufficient to cover the costs of these programs and shall be expended, commencing in the 1992-93 fiscal year, to the extent that appropriations are made in the annual Budget Act. Of the fees collected, and any interest earned thereon, in excess of the authority of the Secretary of State to expend pursuant to the annual Budget Act, up to one million dollars ($1,000,000) may remain in the Secretary of State's Business Fee Fund. Any additional excess fees and interest earned shall be transferred to the General Fund at the end of each fiscal year.

At least weekly, all fees collected by the Secretary of State shall be paid into the State Treasury.

SEC. 5. Section 12191 of the Government Code is amended to read:

12191. The miscellaneous business entity filing fees are the following:

(a) Foreign Associations, as defined in Sections 170 and 171 of the Corporations Code:

(1) Filing the statement and designation upon the qualification of a foreign association pursuant to Section 2105 of the Corporations Code: One hundred dollars ($100).

(2) Filing an amended statement and designation by a foreign association pursuant to Section 2107 of the Corporations Code: Thirty dollars ($30).

(3) Filing a certificate showing the surrender of the right of a foreign association to transact intrastate business pursuant to Section 2112 of the Corporations Code: No fee.

(b) Unincorporated Associations:

(1) Filing a statement in accordance with Section 24003 of the Corporations Code as to principal place of office or place for sending notices or designating agent for service: Twenty-five dollars ($25).

(2) Insignia Registrations: Ten dollars ($10).

(c) Community Associations and Common Interest Developments:

(1) Filing a statement by a community association in accordance with Section 1363.6 of the Civil Code to register the common interest development that it manages: An amount not to exceed thirty dollars ($30).

(2) Filing an amended statement by a community association in accordance with Section 1363.6 of the Civil Code: No fee.

SEC. 6. Section 3.5 of this bill incorporates amendments to Section 1368 of the Civil Code proposed by both this bill and AB 2289. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2003, (2) each bill amends Section 1368 of the

Civil Code, and (3) this bill is enacted after AB 2289, in which case Section 3 of this bill shall not become operative.

CHAPTER 1118

An act to amend Section 391.7 of the Code of Civil Procedure, to amend Sections 210, 3041, and 8804 of the Family Code, and to amend Sections 1000 and 1601 of, and to add Chapter 3 (commencing with Section 1610) to Part 2 of Division 4 of, the Probate Code, relating to guardianship, conservatorship, and custody.

[Approved by Governor September 30, 2002. Filed with Secretary of State September 30, 2002.]

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

SECTION 1. Section 391.7 of the Code of Civil Procedure is amended to read:

391.7. (a) In addition to any other relief provided in this title, the court may, on its own motion or the motion of any party, enter a prefiling order which prohibits a vexatious litigant from filing any new litigation in the courts of this state in propria persona without first obtaining leave of the presiding judge of the court where the litigation is proposed to be filed. Disobedience of the order by a vexatious litigant may be punished as a contempt of court.

(b) The presiding judge shall permit the filing of that litigation only if it appears that the litigation has merit and has not been filed for the purposes of harassment or delay. The presiding judge may condition the filing of the litigation upon the furnishing of security for the benefit of the defendants as provided in Section 391.3.

(c) The clerk may not file any litigation presented by a vexatious litigant subject to a prefiling order unless the vexatious litigant first obtains an order from the presiding judge permitting the filing. If the clerk mistakenly files the litigation without the order, any party may file with the clerk and serve on the plaintiff and other parties a notice stating that the plaintiff is a vexatious litigant subject to a prefiling order as set forth in subdivision (a). The filing of the notice shall automatically stay the litigation. The litigation shall be automatically dismissed unless the plaintiff within 10 days of the filing of that notice obtains an order from the presiding judge permitting the filing of the litigation as set forth in subdivision (b). If the presiding judge issues an order permitting the filing, the stay of the litigation shall remain in effect, and the defendants

need not plead, until 10 days after the defendants are served with a copy of the order.

(d) For purposes of this section, ''litigation'' includes any petition, application, or motion other than a discovery motion, in a proceeding under the Family Code or Probate Code, for any order.

(e) The clerk of the court shall provide the Judicial Council a copy of any prefiling orders issued pursuant to subdivision (a). The Judicial Council shall maintain a record of vexatious litigants subject to those prefiling orders and shall annually disseminate a list of those persons to the clerks of the courts of this state.

SEC. 2. Section 210 of the Family Code is amended to read:

210. Except to the extent that any other statute or rules adopted by the Judicial Council provide applicable rules, the rules of practice and procedure applicable to civil actions generally, including the provisions of Title 3a (commencing with Section 391) of Part 2 of the Code of Civil Procedure, apply to, and constitute the rules of practice and procedure in, proceedings under this code.

SEC. 3. Section 3041 of the Family Code is amended to read:

3041. (a) Before making an order granting custody to a person or persons other than a parent, over the objection of a parent, the court shall make a finding that granting custody to a parent would be detrimental to the child and that granting custody to the nonparent is required to serve the best interest of the child. Allegations that parental custody would be detrimental to the child, other than a statement of that ultimate fact, shall not appear in the pleadings. The court may, in its discretion, exclude the public from the hearing on this issue.

(b) Subject to subdivision (d), a finding that parental custody would be detrimental to the child shall be supported by clear and convincing evidence.

(c) As used in this section, ''detriment to the child'' includes the harm of removal from a stable placement of a child with a person who has assumed, on a day-to-day basis, the role of his or her parent, fulfilling both the child's physical needs and the child's psychological needs for care and affection, and who has assumed that role for a substantial period of time. A finding of detriment does not require any finding of unfitness of the parents.

(d) Notwithstanding subdivision (b), if the court finds by a preponderance of the evidence that the person to whom custody may be given is a person described in subdivision (c), this finding shall constitute a finding that the custody is in the best interest of the child and that parental custody would be detrimental to the child absent a showing by a preponderance of the evidence to the contrary.

SEC. 4. Section 8804 of the Family Code is amended to read:

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

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

(c) If a birth parent who did not place a child for adoption as specified in Section 8801.3 has refused to give the required consent, or a birth parent revokes consent as specified in Section 8814.5, the court shall order the child restored to the care and custody of the birth parent or parents subject to the provisions of Section 3041.

SEC. 5. Section 1000 of the Probate Code is amended to read:

1000. Except to the extent that this code provides applicable rules, the rules of practice applicable to civil actions, including discovery proceedings and proceedings under Title 3a (commencing with Section 391) of Part 2 of the Code of Civil Procedure, apply to, and constitute the rules of practice in, proceedings under this code. All issues of fact joined in probate proceedings shall be tried in conformity with the rules of practice in civil actions.

SEC. 6. Section 1601 of the Probate Code is amended to read:

1601. Upon petition of the guardian, a parent, or the ward, the court may make an order terminating the guardianship if the court determines that it is in the ward's best interest to terminate the guardianship. 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. 7. Chapter 3 (commencing with Section 1610) is added to Part 2 of Division 4 of the Probate Code, to read:

CHAPTER 3. PERMANENT AND STABLE HOME

1610. (a) The Legislature finds and declares that it in the best interest of children to be raised in a permanent, safe, stable, and loving environment.

(b) Unwarranted petitions, applications, or motions other than discovery motions after the guardianship has been established create an

environment that can be harmful to children and are inconsistent with the goals of permanency, safety, and stability.

1611. If a person files a petition for visitation, termination of the guardianship, or instruction to the guardian that is unmeritorious, or intended to harass or annoy the guardian, and the person has previously filed pleadings in the guardianship proceedings that were unmeritorious, or intended to harass or annoy the guardian, this petition shall be grounds for the court to determine that the person is a vexatious litigant for the purposes of Title 3a (commencing with Section 391) of Part 2 of the Code of Civil Procedure. For these purposes, the term ''new litigation'' shall include petitions for visitation, termination of the guardianship, or instruction to the guardian.

CHAPTER 1119

An act to add Section 54963 to the Government Code, relating to open meetings.

[Approved by Governor September 30, 2002. Filed with Secretary of State September 30, 2002.]

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

SECTION 1. Section 54963 is added to the Government Code, to read:

54963. (a) A person may not disclose confidential information that has been acquired by being present in a closed session authorized by Section 54956.7, 54956.8, 54956.86, 54956.87, 54956.9, 54957, 54957.6, 54957.8, or 54957.10 to a person not entitled to receive it, unless the legislative body authorizes disclosure of that confidential information.

(b) For purposes of this section, ''confidential information'' means a communication made in a closed session that is specifically related to the basis for the legislative body of a local agency to meet lawfully in closed session under this chapter.

(c) Violation of this section may be addressed by the use of such remedies as are currently available by law, including, but not limited to:

(1) Injunctive relief to prevent the disclosure of confidential information prohibited by this section.

(2) Disciplinary action against an employee who has willfully disclosed confidential information in violation of this section.

(3) Referral of a member of a legislative body who has willfully disclosed confidential information in violation of this section to the grandjury.

(d) Disciplinary action pursuant to paragraph (2) of subdivision (c) shall require that the employee in question has either received training as to the requirements of this section or otherwise has been given notice of the requirements of this section.

(e) A local agency may not take any action authorized by subdivision (c) against a person, nor shall it be deemed a violation of this section, for doing any of the following:

(1) Making a confidential inquiry or complaint to a district attorney or grand jury concerning a perceived violation of law, including disclosing facts to a district attorney or grand jury that are necessary to establish the illegality of an action taken by a legislative body of a local agency or the potential illegality of an action that has been the subject of deliberation at a closed session if that action were to be taken by a legislative body of a local agency.

(2) Expressing an opinion concerning the propriety or legality of actions taken by a legislative body of a local agency in closed session, including disclosure of the nature and extent of the illegal or potentially illegal action.

(3) Disclosing information acquired by being present in a closed session under this chapter that is not confidential information.

(f) Nothing in this section shall be construed to prohibit disclosures under the whistleblower statutes contained in Section 1102.5 of the Labor Code or Article 4.5 (commencing with Section 53296) of Chapter 2 of this code.

CHAPTER 1120

An act to amend Sections 54954.5 and 54957 of the Government Code, relating to government agencies.

[Approved by Governor September 30, 2002. Filed with Secretary of State September 30, 2002.]

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

SECTION 1. Section 54954.5 of the Government Code is amended to read:

54954.5. For purposes of describing closed session items pursuant to Section 54954.2, the agenda may describe closed sessions as provided below. No legislative body or elected official shall be in violation of

Section 54954.2 or 54956 if the closed session items were described in substantial compliance with this section. Substantial compliance is satisfied by including the information provided below, irrespective of its format.

(a) With respect to a closed session held pursuant to Section 54956.7:

LICENSE/PERMIT DETERMINATION

Applicant(s): (Specify number of applicants)

(b) With respect to every item of business to be discussed in closed session pursuant to Section 54956.8:

CONFERENCE WITH REAL PROPERTY NEGOTIATORS

Property: (Specify street address, or if no street address, the parcel number or other unique reference, of the real property under negotiation)

Agency negotiator: (Specify names of negotiators attending the closed session) (If circumstances necessitate the absence of a specified negotiator, an agent or designee may participate in place of the absent negotiator so long as the name of the agent or designee is announced at an open session held prior to the closed session.)

Negotiating parties: (Specify name of party (not agent))

Under negotiation: (Specify whether instruction to negotiator will concern price, terms of payment, or both)

(c) With respect to every item of business to be discussed in closed session pursuant to Section 54956.9:

CONFERENCE WITH LEGAL COUNSEL—EXISTING LITIGATION

(Subdivision (a) of Section 54956.9)

Name of case: (Specify by reference to claimant's name, names of parties, case or claim numbers)

or

Case name unspecified: (Specify whether disclosure would jeopardize service of process or existing settlement negotiations)

CONFERENCE WITH LEGAL COUNSEL—ANTICIPATED LITIGATION

Significant exposure to litigation pursuant to subdivision (b) of Section 54956.9: (Specify number of potential cases)

(In addition to the information noticed above, the agency may be required to provide additional information on the agenda or in an oral statement prior to the closed session pursuant to subparagraphs (B) to (E), inclusive, of paragraph (3) of subdivision (b) of Section 54956.9.)

Initiation of litigation pursuant to subdivision (c) of Section 54956.9: (Specify number of potential cases)

(d) With respect to every item of business to be discussed in closed session pursuant to Section 54956.95:

LIABILITY CLAIMS
Claimant: (Specify name unless unspecified pursuant to Section 54961)
Agency claimed against: (Specify name)

(e) With respect to every item of business to be discussed in closed session pursuant to Section 54957:

THREAT TO PUBLIC SERVICES OR FACILITIES
Consultation with: (Specify name of law enforcement agency and title of officer, or name of applicable agency representative and title)
PUBLIC EMPLOYEE APPOINTMENT
Title: (Specify description of position to be filled)
PUBLIC EMPLOYMENT
Title: (Specify description of position to be filled)
PUBLIC EMPLOYEE PERFORMANCE EVALUATION
Title: (Specify position title of employee being reviewed)
PUBLIC EMPLOYEE DISCIPLINE/DISMISSAL/RELEASE
(No additional information is required in connection with a closed session to consider discipline, dismissal, or release of a public employee. Discipline includes potential reduction of compensation.)

(f) With respect to every item of business to be discussed in closed session pursuant to Section 54957.6:

CONFERENCE WITH LABOR NEGOTIATORS
Agency designated representatives: (Specify names of designated representatives attending the closed session) (If circumstances necessitate the absence of a specified designated representative, an agent or designee may participate in place of the absent representative so long as the name of the agent or designee is announced at an open session held prior to the closed session.)
Employee organization: (Specify name of organization representing employee or employees in question)
or
Unrepresented employee: (Specify position title of unrepresented employee who is the subject of the negotiations)

(g) With respect to closed sessions called pursuant to Section 54957.8:

CASE REVIEW/PLANNING

(No additional information is required in connection with a closed session to consider case review or planning.)

(h) With respect to every item of business to be discussed in closed session pursuant to Sections 1461, 32106, and 32155 of the Health and Safety Code or Sections 37606 and 37624.3 of the Government Code:

REPORT INVOLVING TRADE SECRET

Discussion will concern: (Specify whether discussion will concern proposed new service, program, or facility)

Estimated date of public disclosure: (Specify month and year)

HEARINGS

Subject matter: (Specify whether testimony/deliberation will concern staff privileges, report of medical audit committee, or report of quality assurance committee)

(i) With respect to every item of business to be discussed in closed session pursuant to Section 54956.86:

CHARGE OR COMPLAINT INVOLVING INFORMATION PROTECTED BY FEDERAL LAW

(No additional information is required in connection with a closed session to discuss a charge or complaint pursuant to Section 54956.86.)

SEC. 2. Section 54957 of the Government Code is amended to read:

54957. (a) Nothing contained in this chapter shall be construed to prevent the legislative body of a local agency from holding closed sessions with the Attorney General, district attorney, agency counsel, sheriff, or chief of police, or their respective deputies, or a security consultant or a security operations manager, on matters posing a threat to the security of public buildings, a threat to the security of essential public services, including water, drinking water, wastewater treatment, natural gas service, and electric service, or a threat to the public's right of access to public services or public facilities.

(b) (1) Subject to paragraph (2), nothing contained in this chapter shall be construed to prevent the legislative body of a local agency from holding closed sessions during a regular or special meeting to consider the appointment, employment, evaluation of performance, discipline, or dismissal of a public employee or to hear complaints or charges brought

against the employee by another person or employee unless the employee requests a public session.

(2) As a condition to holding a closed session on specific complaints or charges brought against an employee by another person or employee, the employee shall be given written notice of his or her right to have the complaints or charges heard in an open session rather than a closed session, which notice shall be delivered to the employee personally or by mail at least 24 hours before the time for holding the session. If notice is not given, any disciplinary or other action taken by the legislative body against the employee based on the specific complaints or charges in the closed session shall be null and void.

(3) The legislative body also may exclude from the public or closed meeting, during the examination of a witness, any or all other witnesses in the matter being investigated by the legislative body.

(4) For the purposes of this subdivision, the term ''employee'' shall include an officer or an independent contractor who functions as an officer or an employee but shall not include any elected official, member of a legislative body or other independent contractors. Nothing in this subdivision shall limit local officials' ability to hold closed session meetings pursuant to Sections 1461, 32106, and 32155 of the Health and Safety Code or Sections 37606 and 37624.3 of the Government Code. Closed sessions held pursuant to this subdivision shall not include discussion or action on proposed compensation except for a reduction of compensation that results from the imposition of discipline.

CHAPTER 1121

An act to amend Sections 21080.5, 21151, 21159.9, and 21167.6 of, and to add Section 21167.6.5 to, the Public Resources Code, relating to environmental protection.

[Approved by Governor September 30, 2002. Filed with Secretary of State September 30, 2002.]

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

SECTION 1. Section 21080.5 of the Public Resources Code is amended to read:

21080.5. (a) Except as provided in Section 21158.1, when the regulatory program of a state agency requires a plan or other written documentation containing environmental information and complying with paragraph (3) of subdivision (d) to be submitted in support of any activity listed in subdivision (b), the plan or other written documentation

may be submitted in lieu of the environmental impact report required by this division if the Secretary of the Resources Agency has certified the regulatory program pursuant to this section.

(b) This section applies only to regulatory programs or portions thereof that involve either of the following:

(1) The issuance to a person of a lease, permit, license, certificate, or other entitlement for use.

(2) The adoption or approval of standards, rules, regulations, or plans for use in the regulatory program.

(c) A regulatory program certified pursuant to this section is exempt from Chapter 3 (commencing with Section 21100), Chapter 4 (commencing with Section 21150), and Section 21167, except as provided in Article 2 (commencing with Section 21157) of Chapter 4.5.

(d) To qualify for certification pursuant to this section, a regulatory program shall require the utilization of an interdisciplinary approach that will ensure the integrated use of the natural and social sciences in decisionmaking and that shall meet all of the following criteria:

(1) The enabling legislation of the regulatory program does both of the following:

(A) Includes protection of the environment among its principal purposes.

(B) Contains authority for the administering agency to adopt rules and regulations for the protection of the environment, guided by standards set forth in the enabling legislation.

(2) The rules and regulations adopted by the administering agency for the regulatory program do all of the following:

(A) Require that an activity will not be approved or adopted as proposed if there are feasible alternatives or feasible mitigation measures available that would substantially lessen any significant adverse effect that the activity may have on the environment.

(B) Include guidelines for the orderly evaluation of proposed activities and the preparation of the plan or other written documentation in a manner consistent with the environmental protection purposes of the regulatory program.

(C) Require the administering agency to consult with all public agencies that have jurisdiction, by law, with respect to the proposed activity.

(D) Require that final action on the proposed activity include the written responses of the issuing authority to significant environmental points raised during the evaluation process.

(E) Require the filing of a notice of the decision by the administering agency on the proposed activity with the Secretary of the Resources Agency. Those notices shall be available for public inspection, and a list

of the notices shall be posted on a weekly basis in the Office of the Resources Agency. Each list shall remain posted for a period of 30 days.

(F) Require notice of the filing of the plan or other written documentation to be made to the public and to any person who requests, in writing, notification. The notification shall be made in a manner that will provide the public or any person requesting notification with sufficient time to review and comment on the filing.

(3) The plan or other written documentation required by the regulatory program does both of the following:

(A) Includes a description of the proposed activity with alternatives to the activity, and mitigation measures to minimize any significant adverse effect on the environment of the activity.

(B) Is available for a reasonable time for review and comment by other public agencies and the general public.

(e) (1) The Secretary of the Resources Agency shall certify a regulatory program that the secretary determines meets all the qualifications for certification set forth in this section, and withdraw certification on determination that the regulatory program has been altered so that it no longer meets those qualifications. Certification and withdrawal of certification shall occur only after compliance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(2) In determining whether or not a regulatory program meets the qualifications for certification set forth in this section, the inquiry of the secretary shall extend only to the question of whether the regulatory program meets the generic requirements of subdivision (d). The inquiry shall not extend to individual decisions to be reached under the regulatory program, including the nature of specific alternatives or mitigation measures that might be proposed to lessen any significant adverse effect on the environment of the activity.

(3) If the secretary determines that the regulatory program submitted for certification does not meet the qualifications for certification set forth in this section, the secretary shall adopt findings setting forth the reasons for the determination.

(f) After a regulatory program has been certified pursuant to this section, any proposed change in the program that could affect compliance with the qualifications for certification specified in subdivision (d) may be submitted to the Secretary of the Resources Agency for review and comment. The scope of the secretary's review shall extend only to the question of whether the regulatory program meets the generic requirements of subdivision (d). The review shall not extend to individual decisions to be reached under the regulatory program, including specific alternatives or mitigation measures that might be proposed to lessen any significant adverse effect on the

environment of the activity. The secretary shall have 30 days from the date of receipt of the proposed change to notify the state agency whether the proposed change will alter the regulatory program so that it no longer meets the qualification for certification established in this section and will result in a withdrawal of certification as provided in this section.

(g) Any action or proceeding to attack, review, set aside, void, or annul a determination or decision of a state agency approving or adopting a proposed activity under a regulatory program that has been certified pursuant to this section on the basis that the plan or other written documentation prepared pursuant to paragraph (3) of subdivision (d) does not comply with this section shall be commenced not later than 30 days from the date of the filing of notice of the approval or adoption of the activity.

(h) (1) Any action or proceeding to attack, review, set aside, void, or annul a determination of the Secretary of the Resources Agency to certify a regulatory program pursuant to this section on the basis that the regulatory program does not comply with this section shall be commenced within 30 days from the date of certification by the secretary.

(2) In any action brought pursuant to paragraph (1), the inquiry shall extend only to whether there was a prejudicial abuse of discretion by the secretary. Abuse of discretion is established if the secretary has not proceeded in a manner required by law or if the determination is not supported by substantial evidence.

(i) For purposes of this section, any county agricultural commissioner is a state agency.

(j) For purposes of this section, any air quality management district or air pollution control district is a state agency, except that the approval, if any, by a district of a nonattainment area plan is subject to this section only if, and to the extent that, the approval adopts or amends rules or regulations.

(k) (1) The secretary, by July 1, 2003, shall develop a protocol for reviewing the prospective application of certified regulatory programs to evaluate the consistency of those programs with the requirements of this division. Following the completion of the development of the protocol, the secretary shall provide a report to the Senate Committee on Environmental Quality and the Assembly Committee on Natural Resources regarding the need for a grant of additional statutory authority authorizing the secretary to undertake a review of the certified regulatory programs.

(2) The secretary shall provide a significant opportunity for public participation in developing the protocol described in paragraph (1) including, but not limited to, at least two public meetings with interested parties. A notice of each meeting shall be provided at least 10 days prior

to the meeting to any person who files a written request for a notice with the agency.

SEC. 2. Section 21151 of the Public Resources Code is amended to read:

21151. (a) All local agencies shall prepare, or cause to be prepared by contract, and certify the completion of, an environmental impact report on any project that they intend to carry out or approve which may have a significant effect on the environment. When a report is required by Section 65402 of the Government Code, the environmental impact report may be submitted as a part of that report.

(b) For purposes of this section, any significant effect on the environment shall be limited to substantial, or potentially substantial, adverse changes in physical conditions which exist within the area as defined in Section 21060.5.

(c) If a nonelected decisionmaking body of a local lead agency certifies an environmental impact report, approves a negative declaration or mitigated negative declaration, or determines that a project is not subject to this division, that certification, approval, or determination may be appealed to the agency's elected decisionmaking body, if any.

SEC. 3. Section 21159.9 of the Public Resources Code is amended to read:

21159.9. The Office of Planning and Research shall implement, utilizing existing resources, a public assistance and information program, to ensure efficient and effective implementation of this division, to do all of the following:

(a) Establish a public education and training program for planners, developers, and other interested parties to assist them in implementing this division.

(b) Establish and maintain a data base to assist in the preparation of environmental documents.

(c) Establish and maintain a central repository for the collection, storage, retrieval, and dissemination of notices of exemption, notices of preparation, notices of determination, and notices of completion provided to the office, and make the notices available through the Internet. The office may coordinate with another state agency for that agency to make the notices available through the Internet.

(d) Commencing January 1, 2003, copies of any documents submitted in electronic format to the Office of Planning and Research pursuant to this division shall be furnished by the office to the California State Library. The California State Library shall be the repository for those electronic documents, which shall be made available for viewing by the general public upon request.

SEC. 4. Section 21167.6 of the Public Resources Code is amended to read:

21167.6. Notwithstanding any other provision of law, in all actions or proceedings brought pursuant to Section 21167, except those involving the Public Utilities Commission, all of the following shall apply:

(a) At the time that the action or proceeding is filed, the plaintiff or petitioner shall file a request that the respondent public agency prepare the record of proceedings relating to the subject of the action or proceeding. The request, together with the complaint or petition, shall be served personally upon the public agency not later than 10 business days from the date that the action or proceeding was filed.

(b) (1) The public agency shall prepare and certify the record of proceedings not later than 60 days from the date that the request specified in subdivision (a) was served upon the public agency. Upon certification, the public agency shall lodge a copy of the record of proceedings with the court and shall serve on the parties notice that the record of proceedings has been certified and lodged with the court. The parties shall pay any reasonable costs or fees imposed for the preparation of the record of proceedings in conformance with any law or rule of court.

(2) The plaintiff or petitioner may elect to prepare the record of proceedings or the parties may agree to an alternative method of preparation of the record of proceedings, subject to certification of its accuracy by the public agency, within the time limit specified in this subdivision.

(c) The time limit established by subdivision (b) may be extended only upon the stipulation of all parties who have been properly served in the action or proceeding or upon order of the court. Extensions shall be liberally granted by the court when the size of the record of proceedings renders infeasible compliance with that time limit. There is no limit on the number of extensions that may be granted by the court, but no single extension shall exceed 60 days unless the court determines that a longer extension is in the public interest.

(d) If the public agency fails to prepare and certify the record within the time limit established in paragraph (1) of subdivision (b), or any continuances of that time limit, the plaintiff or petitioner may move for sanctions, and the court may, upon that motion, grant appropriate sanctions.

(e) The record of proceedings shall include, but is not limited to, all of the following items:

(1) All project application materials.

(2) All staff reports and related documents prepared by the respondent public agency with respect to its compliance with the

substantive and procedural requirements of this division and with respect to the action on the project.

(3) All staff reports and related documents prepared by the respondent public agency and written testimony or documents submitted by any person relevant to any findings or statement of overriding considerations adopted by the respondent agency pursuant to this division.

(4) Any transcript or minutes of the proceedings at which the decisionmaking body of the respondent public agency heard testimony on, or considered any environmental document on, the project, and any transcript or minutes of proceedings before any advisory body to the respondent public agency that were presented to the decisionmaking body prior to action on the environmental documents or on the project.

(5) All notices issued by the respondent public agency to comply with this division or with any other law governing the processing and approval of the project.

(6) All written comments received in response to, or in connection with, environmental documents prepared for the project, including responses to the notice of preparation.

(7) All written evidence or correspondence submitted to, or transferred from, the respondent public agency with respect to compliance with this division or with respect to the project.

(8) Any proposed decisions or findings submitted to the decisionmaking body of the respondent public agency by its staff, or the project proponent, project opponents, or other persons.

(9) The documentation of the final public agency decision, including the final environmental impact report, mitigated negative declaration, or negative declaration, and all documents, in addition to those referenced in paragraph (3), cited or relied on in the findings or in a statement of overriding considerations adopted pursuant to this division.

(10) Any other written materials relevant to the respondent public agency's compliance with this division or to its decision on the merits of the project, including the initial study, any drafts of any environmental document, or portions thereof, that have been released for public review, and copies of studies or other documents relied upon in any environmental document prepared for the project and either made available to the public during the public review period or included in the respondent public agency's files on the project, and all internal agency communications, including staff notes and memoranda related to the project or to compliance with this division.

(11) The full written record before any inferior administrative decisionmaking body whose decision was appealed to a superior administrative decisionmaking body prior to the filing of litigation.

(f) In preparing the record of proceedings, the party preparing the record shall strive to do so at reasonable cost in light of the scope of the record.

(g) The clerk of the superior court shall prepare and certify the clerk's transcript on appeal not later than 60 days from the date that the notice designating the papers or records to be included in the clerk's transcript was filed with the superior court, if the party or parties pay any costs or fees for the preparation of the clerk's transcript imposed in conformance with any law or rules of court. Nothing in this subdivision precludes an election to proceed by appendix, as provided in Rule 5.1 of the California Rules of Court.

(h) Extensions of the period for the filing of any brief on appeal may be allowed only by stipulation of the parties or by order of the court for good cause shown. Extensions for the filing of a brief on appeal shall be limited to one 30-day extension for the preparation of an opening brief, and one 30-day extension for the preparation of a responding brief, except that the court may grant a longer extension or additional extensions if it determines that there is a substantial likelihood of settlement that would avoid the necessity of completing the appeal.

(i) At the completion of the filing of briefs on appeal, the appellant shall notify the court of the completion of the filing of briefs, whereupon the clerk of the reviewing court shall set the appeal for hearing on the first available calendar date.

SEC. 5. Section 21167.6.5 is added to the Public Resources Code, to read:

21167.6.5. (a) The petitioner or plaintiff shall name, as a real party in interest, any recipient of an approval that is the subject of an action or proceeding brought pursuant to Section 21167, 21168, or 21168.5, and shall serve the petition or complaint on that real party in interest, by personal service, mail facsimile, or any other method permitted by law not later than 20 business days following service of the petition or complaint on the public agency.

(b) The public agency shall provide the petitioner or plaintiff, not later than 10 business days following service of the petition or complaint on the public agency, with a list of responsible agencies and any public agency having jurisdiction over a natural resource affected by the project.

(c) The petitioner or plaintiff shall provide the responsible agencies, and any public agency having jurisdiction over a natural resource affected by the project, with notice of the action or proceeding within 15 days of receipt of the list described in subdivision (b).

(d) Failure to name potential parties, other than those described in subdivision (a) or (b), is not grounds for dismissal pursuant to Section 389 of the Code of Civil Procedure.

(e) Nothing in this section is intended to affect an existing right of a party to intervene in the action.

SEC. 6. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

CHAPTER 1122

An act to amend Section 10430 of, and to add Article 4 (commencing with Section 10515) and Article 5 (commencing with Section 10520) to Chapter 2.1 of Part 2 of Division 2 of, the Public Contract Code, relating to public contracts.

[Approved by Governor September 30, 2002. Filed with Secretary of State September 30, 2002.]

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

SECTION 1. Section 10430 of the Public Contract Code is amended to read:

10430. This chapter does not apply to any of the following:

(a) The Regents of the University of California and the Trustees of the California State University, except that Section 10365.5, Article 8 (commencing with Section 10410), and Article 9 (commencing with Section 10420) shall apply to the Trustees of the California State University.

(b) (1) Transactions covered under Chapter 3 (commencing with Section 12100), except that Sections 10365.5, 10410, and 10411 shall apply to all transactions under that chapter.

(2) Notwithstanding paragraph (1), Section 10365.5 shall not apply to incidental advice or suggestions made outside of the scope of a consulting services contract.

(c) Except as otherwise provided in this chapter, any entity exempted from Section 10295. However, the Board of Governors of the California Community Colleges shall be governed by this chapter, except as provided in Sections 10295, 10335, and 10389.

(d) Transactions covered under Chapter 10 (commencing with Section 4525) of Division 5 of Title 1 of the Government Code.

(e) Except as provided for in subdivision (c), members of boards or commissions who receive no payment other than payment for each meeting of the board or commission, payment for preparatory time, and payment for per diem.

(f) The emergency purchase of protective vests for correctional peace officers whose duties require routine contact with state prison inmates. This subdivision shall remain operative only until January 1, 1987.

(g) Spouses of state officers or employees and individuals and entities that employ spouses of state officers and employees, that are vendored to provide services to regional center clients pursuant to Section 4648 of the Welfare and Institutions Code if the vendor of services, in that capacity, does not receive any material financial benefit, distinguishable from the benefit to the public generally, from any governmental decision made by the state officer or employee.

SEC. 2. Article 4 (commencing with Section 10515) is added to Chapter 2.1 of Part 2 of Division 2 of the Public Contract Code, to read:

Article 4. Conflict of Interest

10515. (a) No person, firm, or subsidiary thereof who has been awarded a consulting services contract may submit a bid for, nor be awarded a contract on or after January 1, 2003, for, the provision of services, procurement of goods or supplies, or any other related action that is required, suggested, or otherwise deemed appropriate in the end product of the consulting services contract.

(b) Subdivision (a) does not apply to any person, firm, or subsidiary thereof who is awarded a subcontract of a consulting services contract that amounts to no more than 10 percent of the total monetary value of the consulting services contract.

10516. No officer or employee of the University of California shall engage in any employment, activity, or enterprise from which the officer or employee receives compensation or in which the officer or employee has a financial interest if that employment, activity, or enterprise is sponsored or funded, or sponsored and funded, by any university department through or by a university contract unless the employment, activity, or enterprise is within the course and scope of the officer's or employee's regular university employment. No officer or employee in the university shall contract on his or her own individual behalf as an independent contractor with any university department to provide services or goods. This section shall not apply to officers or employees of the university with teaching or research responsibilities.

10517. (a) No retired, dismissed, separated, or formerly employed person of the University of California employed with the university or otherwise appointed to serve in the university may enter into a contract

in which he or she engaged in any of the negotiations, transactions, planning, arrangements, or any part of the decisionmaking process relevant to the contract while employed in any capacity by any university department. The prohibition of this subdivision shall apply to a person only during the two-year period beginning on the date the person left university employment.

(b) For a period of 12 months following the date of his or her retirement, dismissal, or separation from the University of California, no person employed in the university or otherwise appointed to serve in the university may enter into a contract with any university department, if he or she was employed by that department in a policymaking position in the same general subject area as the proposed contract within the 12-month period prior to his or her retirement, dismissal, or separation. The prohibition of this subdivision shall not apply to a contract requiring the person's services as an expert witness in a civil case or to a contract for the continuation of an attorney's services on a matter he or she was involved with prior to leaving the university.

(c) This section does not prohibit the rehire or reappointment of University of California employees after retirement, consistent with university administrative policies, nor does it apply to inventors and authors of intellectual property licensed under technology transfer agreements.

10518. Each contractor who enters into a contract with the University of California for ten thousand dollars ($10,000) or more, shall be assigned an identification number by the university. Each contractor who has been assigned a number shall list it on each contract he or she enters into with the university, regardless of the amount of the contract. In the case of a corporation or firm, the president's assigned number shall be used exclusively on each contract. The assigned number shall remain unchanged regardless of future name changes.

SEC. 3. Article 5 (commencing with Section 10520) is added to Chapter 2.1 of Part 2 of Division 2 of the Public Contract Code, to read:

Article 5. Remedies and Penalties

10520. Every contract or other transaction entered in violation of any provision of this chapter is void, unless the violation is technical or nonsubstantive.

10521. The University of California, or any person acting on behalf of the university, may bring a civil action seeking a determination by the superior court that a contract or other transaction has been entered in violation of any provision of this chapter. If the court finds substantial evidence of a violation, it may issue a temporary injunction to prevent any further dealings upon the contract or other transaction, pending a

final determination on the merits of the case. If the action results in a final determination that the contract or other transaction has been entered in violation of this chapter, it shall be void, and the state or person bringing the action shall be awarded costs and attorney's fees. This section shall not be construed to permit an award of costs and attorney fees to the person or entity contracting or otherwise transacting with the university.

10522. Any officer or employee of the University of California who corruptly performs any official act under this chapter to the injury of the university is guilty of a felony.

10523. Any person contracting with the University of California by oral or written contract who corruptly permits the violation of any contract made under this chapter is guilty of a felony.

10524. Persons convicted under Section 10522 or 10523 are also liable to the University of California for double the amount the university may have lost, or be liable to lose by reason of the acts made crimes by this article.

10525. Willful violation of any other provision of this chapter shall constitute a misdemeanor.

SEC. 4. On or before April 1, 2003, the Department of Finance shall report to the Legislature regarding the effect this act will have on the state's contracting costs.

SEC. 5. Sections 1 to 3, inclusive, of this act shall become operative on July 1, 2003.

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

CHAPTER 1123

An act to amend, repeal, and add Section 7071.6 of the Business and Professions Code, relating to contractors.

[Approved by Governor September 30, 2002. Filed with Secretary of State September 30, 2002.]

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

SECTION 1. Section 7071.6 of the Business and Professions Code is amended to read:

7071.6. (a) The board shall require as a condition precedent to the issuance, reinstatement, reactivation, renewal, or continued maintenance of a license, that the applicant or licensee file or have on file a contractor's bond in the sum of seven thousand five hundred dollars ($7,500), except that a license bond in the sum of ten thousand dollars ($10,000) shall be required for an applicant or licensee to obtain the swimming pool classification outlined in Section 832.53 of Title 16 of the California Code of Regulations.

(b) No bond shall be required of a holder of a license that has been inactivated on the official records of the board during the period the license is inactive.

(c) Notwithstanding any other provision of law, as a condition precedent to licensure, the board may require an applicant to post a contractor's bond in twice the amount required pursuant to subdivision (a) until the time that the license is renewed, under the following conditions:

(1) The applicant has either been convicted of a violation of Section 7028 or has been cited pursuant to Section 7028.7.

(2) If the applicant has been cited pursuant to Section 7028.7, the citation has been reduced to a final order of the registrar.

(3) The violation of Section 7028, or the basis for the citation issued pursuant to Section 7028.7, constituted a substantial injury to the public.

(d) This section shall become inoperative and is repealed on January 1, 2004, unless a later enacted statute deletes or extends that date.

SEC. 2. Section 7071.6 is added to the Business and Professions Code, to read:

7071.6. (a) The board shall require as a condition precedent to the issuance, reinstatement, reactivation, renewal, or continued maintenance of a license, that the applicant or licensee file or have on file a contractor's bond in the sum of ten thousand dollars ($10,000), regardless of the classification. However, on and after January 1, 2007, the sum of the bond that an applicant or licensee is required to have on file shall be twelve thousand five hundred dollars ($12,500).

(b) Excluding the claims brought by the beneficiaries specified in subdivision (a) of Section 7071.5, the aggregate liability of a surety on claims brought against a bond required by this section shall not exceed the sum of seven thousand five hundred dollars ($7,500). The bond proceeds in excess of seven thousand five hundred dollars ($7,500) shall be reserved exclusively for the claims of the beneficiaries specified in subdivision (a) of Section 7071.5. However, nothing in this section shall

be construed so as to prevent any beneficiary specified in subdivision (a) of Section 7071.5 from claiming or recovering the full measure of the bond required by this section.

(c) No bond shall be required of a holder of a license that has been inactivated on the official records of the board during the period the license is inactive.

(d) Notwithstanding any other provision of law, as a condition precedent to licensure, the board may require an applicant to post a contractor's bond in twice the amount required pursuant to subdivision (a) until the time that the license is renewed, under the following conditions:

(1) The applicant has either been convicted of a violation of Section 7028 or has been cited pursuant to Section 7028.7.

(2) If the applicant has been cited pursuant to Section 7028.7, the citation has been reduced to a final order of the registrar.

(3) The violation of Section 7028, or the basis for the citation issued pursuant to Section 7028.7, constituted a substantial injury to the public.

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

CHAPTER 1124

An act to amend Sections 7342 and 17591 of the Business and Professions Code, to amend Section 1540 of the Code of Civil Procedure, to amend Section 37220.6 of, and to add and repeal Section 37220.8 of, the Education Code, to amend Sections 910.4, 915.2, 935.7, 7299.4, 7299.6, 10205, 13103.5, 13915, 14612, 15323.5, 16429.1, 16475, 16475.5, 16724.6, 16727, 16731.6, 17551, 17558.5, 17561, 17562, and 17564 of, to amend, repeal, and add Section 12439 of, to add Sections 14612.5, 14669.21, 15320, 15364.725, 15605.5, and 16320 to, and to add and repeal Section 68087 of, the Government Code, to amend Sections 18909, 18913, 18937, 18938, 18942, and 18943 of the Health and Safety Code, to add Section 12907 to the Insurance Code, to amend Sections 62.5, 142, 142.3, and 1777.5 of, and to repeal Section 142.6 of, the Labor Code, to amend Sections 830.5, 1203.1d, 6045.8, and 13601 of, to add Section 2933.3 to, and to add and repeal Section 1465.7 of, the Penal Code, to amend Sections 309.5 and 3340 of the Public Utilities Code, to amend Sections 13563, 19521, and 40016 of, and to add Section 30018 to, the Revenue and Taxation Code, to amend Section 13260 of the Water Code, and to amend Section 3053 of, and to add Section 3055 to, the Welfare and Institutions Code, relating to state and local government, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 30, 2002. Filed with
Secretary of State September 30, 2002.]

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

SECTION 1. Section 7342 of the Business and Professions Code is amended to read:

7342. Licenses in the practice of the occupation for which the license was sought shall be issued by the bureau to any applicant who satisfactorily passes an examination, who possesses the other qualifications required by law and who has remitted the license fee required by this chapter. The license shall entitle the holder to engage in the practice of that occupation in a licensed establishment. The license shall be issued by the bureau on the same day that the applicant satisfactorily passes the examination.

SEC. 2. Section 17591 of the Business and Professions Code is amended to read:

17591. (a) The Attorney General shall not later than January 1, 2003, maintain a ''do not call'' list, updated no less frequently than quarterly, which shall set forth the California telephone numbers and ZIP Codes, but not the names or addresses, of subscribers, arranged by area code and numerical sequence, who do not wish to receive unsolicited and unwanted telephone calls from telephone solicitors as defined in Section 17592. The ''do not call'' list shall indicate any exclusions designated by the subscriber as provided in subdivision (b).

(b) Subscribers may place their telephone numbers and ZIP Codes on the ''do not call'' list in the manner prescribed by the Attorney General. The subscriber's placement on the ''do not call'' list shall expire three years after the date on which the subscriber's telephone number and ZIP Code first became available on the list to telephone solicitors. The Attorney General shall triennially charge these subscribers a fee not to exceed five dollars ($5). A subscriber may exclude from the coverage of the ''do not call'' list telephone calls from entities identified by the subscriber. The subscriber shall designate any exclusions in the manner prescribed by the Attorney General.

(c) Telephone solicitors, as defined in Section 17592, shall obtain copies of the ''do not call'' list by paying a fee to the Attorney General in an amount not to exceed the costs incurred by the Attorney General in the preparation, maintenance, production, and distribution of that list. The Attorney General shall establish a sliding scale fee schedule, charging a telephone solicitor with more than 1,000 employees or independent contractors the maximum fee and charging a telephone solicitor with fewer than five full-time employees no fee. The Attorney General shall provide a telephone solicitor the option of paying this fee

on a quarterly or annual basis. The Attorney General shall offer a statewide list and shall also offer lists of areas within the state. The determination of the number and definition of areas shall be within the discretion of the Attorney General.

(d) The Attorney General shall utilize the best available, cost-effective technology to ensure that subscribers may easily place their telephone numbers on the ''do not call'' list. This technology includes, but is not limited to, methods by which a subscriber may effect placement on the list by using a state-designated Internet Web site or a designated, statewide toll-free telephone number. When the subscriber utilizes the toll-free telephone number method, the subscriber shall call from the telephone that is also the number to be included on the list. The Attorney General shall also utilize the best available, cost-effective technology to ensure that telephone solicitors may easily obtain and manipulate the ''do not call'' list. This technology may include, but is not limited to, methods that are computer compatible and that allow the downloading of the list and the sorting of the list by ZIP Code and that make the list available on CD-ROM. The Attorney General may contract with a private vendor to establish, maintain, and administer the ''do not call'' list and a contract entered into in that regard shall include appropriate provisions to protect the confidentiality of subscriber information. The Attorney General may promulgate regulations to implement the provisions of this article.

(e) It is the intent of the Legislature that the fees paid to the Attorney General by telephone solicitors and subscribers be utilized by the Attorney General in carrying out this article. The Attorney General shall annually reduce the amount of the fee paid by subscribers and telephone solicitors set forth in this section based on revenue history and costs so that the fees do not exceed the actual estimated costs in carrying out this article. The fees obtained by the Attorney General shall be deposited in the Special Telephone Solicitors Fund, which is hereby created. All moneys in the fund shall be subject to annual appropriation in the Budget Act.

(f) A person or entity that obtains a ''do not call'' list shall not use the list for any purpose other than to comply with this article. These unlawful purposes include, but are not limited to, causing a subscriber to participate in and be included on, the ''do not call'' list without the subscriber's knowledge or consent, selling or leasing the ''do not call'' list to a person other than a telephone solicitor, selling or leasing by a telephone solicitor of the ''do not call'' list, and a telephone solicitor, either directly or indirectly, persuading a subscriber with whom it has an established business relationship to place his or her telephone number on the ''do not call'' list, if the solicitation has the effect of preventing competitors from contacting that solicitor's customers.

SEC. 3. Section 1540 of the Code of Civil Procedure is amended to read:

1540. (a) Any person, excluding another state, who claims an interest in property paid or delivered to the Controller under this chapter may file a claim to the property or to the net proceeds from its sale. The claim shall be on a form prescribed by the Controller and shall be verified by the claimant.

(b) The Controller shall consider each claim within 90 days after it is filed and may hold a hearing and receive evidence. The Controller shall give written notice to the claimant if he or she denies the claim in whole or in part. The notice may be given by mailing it to the address, if any, stated in the claim as the address to which notices are to be sent. If no address is stated in the claim, the notice may be mailed to the address, if any, of the claimant as stated in the claim. No notice of denial need be given if the claim fails to state either an address to which notices are to be sent or an address of the claimant.

(c) The Controller shall add interest at the rate of 5 percent or the bond equivalent rate of 13-week United States Treasury bills, whichever is lower, to the amount of any claim paid the owner under this section for the period the property was on deposit in the Unclaimed Property Fund. No interest shall be payable for any period prior to January 1, 1977. Any interest required to be paid by the state pursuant to this section shall be computed as simple interest, not compound interest. For purposes of this section, the bond equivalent rate of 13-week United States Treasury bills shall be defined in accordance with the following criteria:

(1) The bond equivalent rate of 13-week United States Treasury bills established at the first auction held during the month of January shall apply for the following July 1 to December 31, inclusive.

(2) The bond equivalent rate of 13-week United States Treasury bills established at the first auction held during the month of July shall apply for the following January 1 to June 30, inclusive.

(d) Any holder who pays to the owner, property that has escheated to the state and that, if claimed from the Controller, would be subject to subdivision (c) may add interest as provided in subdivision (c). This added interest shall be repaid to the holder by the Controller in the same manner as the principal.

(e) For the purposes of this section, ''owner'' means the person who had legal right to the property prior to its escheat, his or her heirs, or his or her legal representative.

(f) Following a public hearing, the Controller shall adopt guidelines and forms that shall provide specific instructions to assist owners in filing claims pursuant to this article.

SEC. 4. 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 Governor's Office on Service and Volunteerism, in collaboration with the California Conservation Corps.

(b) The Governor's Office on Service and Volunteerism 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 Governor's Office on Service and Volunteerism 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. 5. Section 37220.8 is added to the Education Code, to read:

37220.8. (a) On and after July 1, 2002, the Governor's Office on Service and Volunteerism may make grants pursuant to subdivision (b) of Section 37220.6 based on proposals selected through a competitive process from community-based organizations with strong capacity to design and implement programs that provide high quality service and learning opportunities to pupils in kindergarten and in grades 1 to 12, inclusive. The proposals shall provide all of the following:

(1) Evidence of tax-exempt status pursuant to Section 501(c)(3) of the Internal Revenue Code for all nongovernmental proposals.

(2) Evidence of strong financial management systems as determined by the Governor's Office on Service and Volunteerism.

(3) Experience designing and implementing youth service and learning programs.

(b) Eligible organizations need not have experience administering government funds, however those organizations that have received government funds must have a history of effectively administering those funds.

(c) Funding for these community-based organizations is limited to one million dollars ($1,000,000) per year, with single grants not exceed one hundred thousand dollars ($100,000).

(d) Community-based organizations that do not apply directly to the Governor's Office on Service and Volunteerism for funding pursuant to subdivision (b) of Section 37220.6 remain eligible to receive funds through partnerships with other eligible programs including the programs listed in that subdivision.

(e) This section shall become inoperative on July 1, 2004, and, as of January 1, 2005, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 2005, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 6. Section 910.4 of the Government Code is amended to read:

910.4. (a) The board shall provide forms specifying the information to be contained in claims against the public entity. The person presenting a claim shall use the form in order that his or her claim is deemed in conformity with Sections 910 and 910.2. A claim may be returned to the person if it was not presented using the form. Any claim returned to a person may be resubmitted using the appropriate form.

(b) The amendments made to this section by the act adding this subdivision shall become operative six months after the date that act takes effect.

SEC. 7. Section 915.2 of the Government Code is amended to read:

915.2. If a claim, amendment to a claim, or application to a public entity for leave to present a late claim is presented or sent by mail under this chapter, or if any notice under this chapter is given by mail, the claim, amendment, application, or notice shall be mailed in the manner prescribed in this section. The claim, amendment, application or notice shall be deposited in the United States post office, a mailbox, sub-post office, substation, mail chute, or other similar facility regularly maintained by the government of the United States, in a sealed envelope, properly addressed, with postage paid. The claim, amendment, application, or notice shall be deemed to have been presented and received at the time of the deposit. Any period of notice and any duty to respond after receipt of service of a claim, amendment, application, or notice is extended five days upon service by mail, if the place of address is within the State of California, 10 days if the place of address is within the United States, and 20 days if the place of address is outside the United States. Proof of mailing may be made in the manner prescribed by Section 1013a of the Code of Civil Procedure.

SEC. 8. Section 935.7 of the Government Code is amended to read:

935.7. (a) Notwithstanding Section 935.6, the Department of Transportation may adjust and pay any claim arising out of the activities of the department without the prior approval of the California Victim Compensation and Government Claims Board if both of the following conditions exist:

(1) The amount paid is five thousand dollars ($5,000) or less.

(2) The Director of Finance or the Director of Transportation certifies that a sufficient appropriation for the payment of the claim exists.

(b) If the department elects not to pay any claim, the claim shall be processed by the California Victim Compensation and Government Claims Board in the same manner as any other claim filed against the state.

(c) Any person who submits any claim arising out of any activity of the Department of Transportation shall comply with every other applicable provision of this part relating to claims against state agencies.

SEC. 9. Section 7299.4 of the Government Code is amended to read:

7299.4. (a) Notwithstanding any other provision in this chapter, each state agency shall conduct an assessment and develop and update an implementation plan that complies with the requirements of this chapter.

(b) Each agency shall conduct a survey of each of its local offices every two years to determine all of the following:

(1) The number of public contact positions in each local office.

(2) The number of bilingual employees in public contact positions in each local office, and the languages they speak, other than English.

(3) The number and percentage of non-English-speaking people served by each local office, broken down by native language.

(4) The number of anticipated vacancies in public contact positions.

(5) Whether the use of other available options, including contracted telephone based interpretation services, in addition to bilingual persons in public contact positions, is serving the language needs of the people served by the agency.

(6) A list of all written materials that are required to be translated or otherwise made accessible to non- or limited-English-speaking individuals by Sections 7295.2 and 7295.4.

(7) A list of materials identified in paragraph (5) that have been translated and languages into which they have been translated.

(8) The number of additional bilingual public contact staff, if any, needed at each local office to comply with this chapter.

(9) Any other relevant information requested by the State Personnel Board.

(c) Each agency shall calculate the percentage of non-English-speaking people served by each local office by rounding the percentage arrived at to the nearest whole percentage point.

The survey results shall be reported on forms provided by the State Personnel Board, and delivered to the board not later than March 31 of every even-numbered year beginning with 1992.

(d) Beginning in 2003 and in every even-numbered year thereafter, each state agency shall develop an implementation plan that, at a minimum, addresses all of the following:

(1) The name, position, and contact information of the employee designated by the agency to be responsible for overseeing implementation of the plan.

(2) A description of the agency's procedures for identifying written materials that need to be translated.

(3) A description of the agency's procedures for identifying language needs at local offices and assigning qualified bilingual staff.

(4) A description of how the agency recruits qualified bilingual staff.

(5) A description of any training the agency provides to its staff on the provision of services to non- or limited-English-speaking individuals.

(6) A detailed description of how the agency plans to address any deficiencies in meeting the requirements of this chapter, including, but not limited to, the failure to translate written materials or employ sufficient numbers of qualified bilingual employees in public contact positions at local offices, the proposed actions to be taken to address the

deficiencies, and the proposed dates by when the deficiencies can be remedied.

(7) A description of the agency's procedures for accepting and resolving complaints of an alleged violation of this chapter.

(8) A description of how the agency complies with any federal or other state laws that require the provision of linguistically accessible services to the public.

(9) Any other relevant information requested by the State Personnel Board.

(e) In developing its implementation plan in 2003, each state agency may rely upon data gathered from its 2002 survey.

(f) Each state agency shall submit its implementation plan to the State Personnel Board no later than October 1 of each applicable year. The board shall review each plan, and, if it determines that the plan fails to address the identified deficiencies, the board shall order the agency to supplement or make changes to its plan. A state agency that has been determined to be deficient shall report to the State Personnel Board every six months on its progress in addressing the identified deficiencies.

(g) If the board determines that a state agency has not made reasonable progress toward complying with this chapter, the board may issue orders that it deems appropriate to effectuate the purposes of this chapter.

SEC. 10. Section 7299.6 of the Government Code is amended to read:

7299.6. The State Personnel Board shall review the results of the surveys and implementation plans required to be made by Section 7299.4, compile this data, and provide a report to the Legislature every two years. The report shall identify significant problems or deficiencies and propose solutions where warranted.

SEC. 11. Section 10205 of the Government Code is amended to read:

10205. (a) The Legislative Counsel may employ and fix the compensation, in accordance with law, of such professional assistants and clerical and other employees as he or she deems necessary for the effective conduct of the work under his or her charge.

(b) The Legislative Counsel and the employees of the Legislative Counsel Bureau shall, to the extent that funds appropriated for the support of the Legislative Counsel Bureau include funds for that purpose, receive any or all of the employee benefits provided to employees of either house of the Legislature. The benefits that are authorized by this subdivision shall be in addition to any other employee benefits authorized by any other provision of law.

(c) Notwithstanding subdivision (c) of Section 19853, the Legislative Counsel and the employees of the Legislative Counsel Bureau shall

observe any holiday designated pursuant to subdivision (c) of Section 19853, that is also observed by the Legislature, on the same day that the holiday is observed by the Legislature.

SEC. 12. Section 12439 of the Government Code is amended to read:

12439. (a) Beginning July 1, 2001, and on each July 1 thereafter, the Controller shall abolish any state position that was vacant continuously for six consecutive monthly pay periods during the period between July 1 and June 30 of the preceding fiscal year. Those positions that were continuously vacant for six consecutive monthly pay periods during a fiscal year because of a hiring freeze in effect during part or all of the period shall also be abolished unless the need for continuing these positions is provided in written notice to, and approval is granted by, the Director of Finance.

(b) If late enactment of the annual Budget Act contributes to the abolishment of any proposed new position or positions, or if significant recruitment problems for hard-to-fill classifications, as determined by the Department of Finance, contribute to the abolishment of positions, a state agency may submit a written request for reestablishment of the positions to the Director of Finance. The positions may be reestablished upon approval granted by the Director of Finance.

(c) The only exceptions to this abolishment are those positions exempt from civil service or those instructional and instruction-related positions authorized for the California State University. No money appropriated by the subsequent Budget Act shall be used to pay the salary of any otherwise authorized state position that is abolished pursuant to this section.

(d) The Controller, no later than the following August 1 of each succeeding fiscal year, shall notify the Department of Finance in writing of any authorized state position that was vacant continuously during that period.

(e) The Controller, no later than the following December 1 of each succeeding fiscal year, shall furnish the Joint Legislative Budget Committee a report on all positions as of July 1 that were unfilled continuously for six consecutive monthly pay periods during the period between July 1 and June 30 of the preceding fiscal year.

(f) This section shall remain in effect only until July 1, 2002, and as of that date is repealed.

SEC. 13. Section 12439 is added to the Government Code, to read:

12439. (a) Beginning July 1, 2002, any state position that is vacant for six consecutive monthly pay periods shall be abolished by the Controller on the following July 1. The six consecutive monthly pay periods may occur entirely within one fiscal year or between two consecutive fiscal years.

(b) The Director of Finance may authorize the reestablishment of any positions abolished pursuant to this section if one or more of the following conditions existed during part or all of the six consecutive monthly pay periods:

(1) There was a hiring freeze in effect during part or all of the six consecutive pay periods.

(2) The department has diligently attempted to fill the position, but was unable to complete all the steps necessary to fill the position within six months.

(3) The position has been designated as a management position for purposes of collective bargaining and has been held vacant pending the appointment of the director, or other chief executive officer, of the department as part of the transition from one Governor to the succeeding Governor.

(4) The classification of the position is determined to be hard-to-fill.

(5) Late enactment of the budget causes the department to delay filling the position.

(c) The Controller shall reestablish any position for which the director of the department in which that position existed prior to abolishment certifies by August 15 that one or more of the following conditions existed during part or all of the six consecutive pay periods.

(1) The position is necessary for directly providing 24-hour care in an institution operated by the state.

(2) The position is necessary for the state to satisfy any licensing requirements adopted by a local, state, or federal licensing or other regulatory agency.

(3) The position is directly involved in services for public health, public safety, or homeland security.

(4) The position is being held vacant because the previous incumbent is eligible to exercise a mandatory right of return from a leave of absence as may be required by any provision of law including, but not limited to, leaves for industrial disability, nonindustrial disability, military service, pregnancy, childbirth, or care of a newborn infant.

(5) The position is being held vacant because the department has granted the previous incumbent a permissive leave of absence as may be authorized by any provision of law including, but not limited to, leaves for adoption of a child, education, civilian military work, or to assume a temporary assignment in another agency.

(6) Elimination of the position will directly reduce state revenues or other income by more than would be saved by elimination of the position.

(d) Each department shall maintain for future independent audit all records on which the department relied in determining that any position

or positions satisfied one or more of the criteria specified in paragraphs (1) to (6), inclusive, of subdivision (c).

(e) The only other exceptions to the abolishment required by subdivision (a) are those positions exempt from civil service or those instructional and instruction-related positions authorized for the California State University. No money appropriated by the subsequent Budget Act shall be used to pay the salary of any otherwise authorized state position that is abolished pursuant to this section.

(f) The Controller, no later than September 10 of each fiscal year, shall furnish the Department of Finance in writing a preliminary report of any authorized state positions that were abolished effective on the preceding July 1 pursuant to this section.

(g) The Controller, no later than October 15 of each fiscal year, shall furnish the Joint Legislative Budget Committee and the Department of Finance a final report on all positions that were abolished effective on the preceding July 1.

(h) Departments shall not execute any personnel transactions for the purpose of circumventing the provisions of this section.

(i) Each department shall include a section discussing its compliance with this section when it prepares its report pursuant to Section 13405.

(j) As used in this section, department refers to any department, agency, board, commission, or other organizational unit of state government that is empowered to appoint persons to civil service positions.

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

SEC. 14. Section 13103.5 of the Government Code is amended to read:

13103.5. (a) The department may perform audits, as it deems necessary, of the allocations or expenditures made in accordance with Article XIX B of the California Constitution.

(b) Any audit performed pursuant to this section shall be reported to both houses of the Legislature.

SEC. 15. Section 13915 of the Government Code is amended to read:

13915. The board shall hold regular meetings in Sacramento and may hold other meetings at the times and places within the state as a majority of the board directs. At any meeting the board may transact any business and perform all duties imposed upon it.

SEC. 16. Section 14612 of the Government Code is amended to read:

14612. (a) The department shall commit itself to achieve improved levels of performance, as specified in this section, by focusing its efforts on enhancing the value of the services it delivers.

(b) The department shall commit itself to providing (1) services that the Legislature or Governor requires state agencies to purchase from the department, and (2) services that state agencies are not required to purchase from the department, but that the department can provide on a cost-competitive basis.

(c) Notwithstanding any other provision of law, the director of the department or his or her designee, in lieu of the Director of Finance, may approve DGS Form 22 and DGS Form 220, including the extension of time to expend transferred funds, the transfer of funds from one work order to another, and the Return of Funds Document.

(d) Notwithstanding Chapter 3 (commencing with Section 13940) of Part 4, the director of the department or his or her designee may approve ''relief from accountability'' for debts owed to the department up to five thousand dollars ($5,000) when the department determines it cannot collect the debts or when the cost of collection exceeds the amount of the debt.

(e) Notwithstanding Section 2807 of the Penal Code, the director of the department or his or her designee may procure goods from the private sector even though the goods may be available from the Prison Industry Authority, when in his or her discretion, it is cost beneficial to do so and if the director or his or her designee continues to include the authority in soliciting quotations for goods.

(f) Notwithstanding subdivision (a) of Section 948 and Section 965, the director of the department or his or her designee, in lieu of the Director of Finance, may certify funds for payment of all legal settlements and tort claims for which the department already has sufficient expenditure authority and funds without the need for augmentation.

(g) Notwithstanding Chapter 7 (commencing with Section 14850) or Section 14901, no agency is required to use the Office of State Publishing for its printing needs and the Office of State Publishing may offer printing services to both state and other public agencies, including cites, counties, special districts, community college districts, the California State University, the University of California, and agencies of the United States government. When soliciting bids for printing services from the private sector, all state agencies shall also solicit a bid from the Office of State Publishing when the project is anticipated to cost more than five thousand dollars ($5,000).

(h) Notwithstanding Section 14851, the Office of State Publishing may accept paid advertisements in state publications or in publications promoting an Office of State Publishing supported project or program, except that the Office of State Publishing may not accept or publish any paid political advertising.

(i) Notwithstanding Section 965.2, the director of the department or his or her designee, in lieu of the Director of Finance, may certify funds for payment for all legal court settlements for projects funded from the Architecture Revolving Fund, if a sufficient fund balance exists in the work order to pay the claim and the payment does not require a budget augmentation to complete the project.

(j) Notwithstanding Section 14957, the director of the department or his or her designee, in lieu of the Director of Finance, may approve the deposit of checks directly into the Architecture Revolving Fund. The department shall notify the Department of Finance within 30 days of the date that the department makes such a deposit.

(k) This section shall remain operative only until the effective date of the Budget Act of 2003 or June 30, 2003, whichever occurs later, and, as of January 1, 2004, is repealed, unless a later enacted statute that is enacted before January 1, 2004, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 17. Section 14612.5 is added to the Government Code, to read:

14612.5. Notwithstanding any other provision of law, for state printing procurement purposes, printing is not considered a personal service contract as defined in Section 19130.

SEC. 18. The state's current fiscal condition has necessitated the reallocation of a local assistance appropriation, contained in the Budget Act of 2000, for the Office of Criminal Justice Planning, that was designated for a regional crime laboratory to serve criminal justice agencies in Southern California. Notwithstanding this action, and in furtherance of the mission of the Office of Criminal Justice Planning, the Legislature finds that there is a need for a regional crime laboratory in Los Angeles County and that the state is benefited when multiple state and local criminal justice and educational agencies are allowed to jointly use, maintain, staff, and operate a regional crime laboratory facility. Accordingly, the acquisition, development, design, and construction of a regional crime laboratory in the City and County of Los Angeles is hereby authorized, to be jointly used, maintained, staffed, and operated by various interested state agencies and educational institutions, together with the Los Angeles Regional Crime Laboratory Facility Authority, a joint powers agency consisting of the County of Los Angeles on behalf of its sheriff and the City of Los Angeles on behalf of its police department.

SEC. 18.5. Section 14669.21 is added to the Government Code, to read:

14669.21. (a) The Director of the Department of General Services is authorized to acquire, develop, design, and construct, according to plans and specifications approved by the Los Angeles Regional Crime Laboratory Facility Authority, an approximately 200,000 gross square

foot regional criminal justice laboratory, necessary infrastructure, and related surface parking to accommodate approximately 600 cars on the Los Angeles campus of the California State University. In accordance with this authorization, the director is authorized to enter into any agreements, contracts, leases, or other documents necessary to effectuate and further the transaction. Further, the Los Angeles Regional Crime Laboratory Facility Authority is authorized to assign, and the director is authorized to accept, all contracts already entered into by the Los Angeles Regional Crime Laboratory Facility Authority for the development and design of this project. It is acknowledged that these contracts will have to be modified to make them consistent with the standards for state projects. The director is additionally authorized to enter into a long-term ground lease for 75 years with the Trustees of the California State University for the land within the Los Angeles campus on which the project is to be constructed. At the end of the ground lease term, unencumbered title to the land shall return to the trustees and, at the option of the trustees, ownership of any improvements constructed pursuant to this section shall vest in the trustees. The trustees are authorized and directed to fully cooperate and enter into a ground lease with the Department of General Services upon the terms and conditions that will facilitate the financing of this project by the State Public Works Board. The trustees shall obtain concurrence from the Los Angeles Regional Crime Laboratory Facility Authority in the development of the long-term ground lease referenced in this section. In his or her capacity, the director is directed to obtain concurrence and approval from the trustees relating to the design and construction of the facility consistent with the trustees' reasonable requirements.

(b) The State Public Works Board is authorized to issue lease revenue bonds, negotiable notes, or negotiable bond anticipation notes pursuant to the State Building Construction Act of 1955 (Part 10b (commencing with Section 15800) for the acquisition, development, design, and construction of the regional crime laboratory as described in this section. The project shall be acquired, developed, designed, and constructed on behalf of the State Public Works Board and the Office of Criminal Justice Planning by the Department of General Services in accordance with state laws applicable to state projects provided, however, that the contractor prequalification specified in Section 20101 of the Public Contract Code may be utilized. For purposes of compliance with the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code) the Office of Criminal Justice Planning is the lead agency, and the trustees, acting through California State University at Los Angeles, and the Los Angeles Regional Crime Laboratory Facility Authority are responsible agencies.

(c) The State Public Works Board and the Office of Criminal Justice Planning may borrow funds for project costs from the Pooled Money Investment Account, pursuant to Sections 16312 and 16313, or from any other appropriate source. In the event the bonds authorized by this section for the project are not sold, the Office of Criminal Justice Planning shall commit a sufficient amount of its support appropriation to repay any loans made for the project.

(d) The amount of lease revenue bonds, negotiable notes, or negotiable bond anticipation notes to be issued by the State Public Works Board shall not exceed ninety-two million dollars ($92,000,000) and any additional sums necessary to pay interim and permanent financing costs. The additional sums may also include interest and a reasonably required reserve fund. This amount includes additional estimated project costs associated with reformatting the initial local assistance appropriation into a state managed and constructed regional crime laboratory project.

(e) The Office of Criminal Justice Planning may execute a contract with the State Public Works Board for the lease of the regional crime laboratory facilities described in this section that are financed with the proceeds of the board's bonds. Further, and notwithstanding any other provision of law, the Office of Criminal Justice Planning is authorized to enter into contracts and subleases with the trustees, the Los Angeles Regional Crime Laboratory Facility Authority, the Department of Justice, and any other appropriate state or local agency, with the consent of the State Public Works Board and the Department of General Services, for the use, maintenance, and operation of the financed regional crime laboratory facilities described in this section.

(f) When all of the bonds or notes authorized pursuant to subdivision (d) have been paid in full or provided for in accordance with their terms, notwithstanding any other provision of law, the Department of General Services shall assign the ground lease entered into pursuant to subdivision (a) to the Los Angeles Regional Crime Laboratory Facility Authority or its successor agency. At that time, the ground lease may be amended as agreed to by the trustees and the Los Angeles Regional Crime Laboratory Facility Authority or its successor agency.

SEC. 19. Section 15320 is added to the Government Code, to read:

15320. (a) The Technology, Trade, and Commerce Agency shall develop an agencywide strategic plan covering a minimum of five years, in order to better integrate program efforts and to highlight current state priorities.

(b) The agency shall include all of the following in its strategic planning process required pursuant to subdivision (a):

(1) Goals and targets for all significant aspects of its vision and mission.

(2) Outcome goals that focus efforts on results, where most appropriate.

(3) Outcome goals and related targets in agreements with third parties who deliver program services.

(c) The agency shall ensure that short-term plans for programs within the agency are aligned with the agencywide strategic plan.

(d) Commencing February 15, 2003, and no later than February 15 of each year thereafter, the agency shall report to the chairpersons of the budget committees of the Legislature, as well as to the Chairperson of the Joint Legislative Budget Committee, on its progress in implementing a strategic approach to its planning. The general reports shall include specific recommendations.

SEC. 20. Section 15323.5 of the Government Code is amended to read:

15323.5. In order to carry out its functions and duties, the agency may establish and maintain regional offices in the San Francisco Bay area, Los Angeles County, Sacramento, the greater San Diego area, and elsewhere within the state as appropriate. The San Diego regional office shall pay particular attention to economic development issues involving the border, including maquiladoras, labor, tourism, and other factors, making recommendations, as appropriate, to the Governor and the Legislature on methods, programs, and policies to improve the growth of jobs, income, and standards of living along the border.

SEC. 21. Section 15364.725 is added to the Government Code, to read:

15364.725. (a) The proponent of any new international trade and investment office shall submit a proposed business plan for the office to the Technology, Trade, and Commerce Agency. The business plan shall contain all of the following:

(1) The delineated geographical area to be served by the office, to be defined as the ''region'' to be served by the office.

(2) Actual and potential investment and tourism directed to the state from the region.

(3) Actual and potential export markets in the region for goods produced in the state, and type of goods categorized according to sector.

(4) Leading industries in the region.

(5) Existing federal trade offices, and municipal trade offices from California operating in the region that provide investment, tourism, and export promotion activities for the state.

(6) Other states that have trade offices, or that have investment, tourism, or export promotion offices in the region.

(7) A cost-benefit analysis, including the assumptions on which the analysis is based.

(8) Target export industry markets.

(9) State objectives, goals, and estimated outcome performance.

(b) (1) To the extent that funds are available for that purpose, the agency shall evaluate all business plans that have been submitted to the agency pursuant to subdivision (a) during the 12-month period ending July 1 of any given year, and no later than January 15, of the following year, shall submit those evaluations to the Legislature. The evaluation reports shall include a breakdown of the agency's costs for completion of the evaluation.

(2) To the extent that the agency is not funded to perform the evaluation of the business plans, proponents may pay the cost of the evaluation, pursuant to Section 15364.79.

(c) Each international trade and investment office shall annually provide all of the following baseline information to the agency:

(1) The delineated geographical area to be served by the office, to be defined as the ''region'' served by the office.

(2) Actual and potential investment and tourism directed to the state from the region.

(3) Actual and potential export markets in the region for goods produced in the state, and type of goods categorized according to sector.

(4) Leading industries in the region.

(5) Existing federal trade offices, and municipal trade offices from California operating in the region that provide investment, tourism, and export promotion activities for the state.

(6) Other states that have trade offices, or that have investment, tourism, or export promotion offices in the region.

(7) Target export industry markets.

(8) State objectives, goals, and estimated outcome performance.

(d) (1) Each international trade and investment office shall prepare, and the agency shall submit, annual reports to the Legislature on all of the following information:

(A) The number of clients served.

(B) The nature of contacts made on behalf of each client.

(C) The amount of time spent on each client.

(D) The nature of the assistance provided to each client and the ultimate outcome for the client.

(E) The amount of revenue generated for each client through exports resulting from agency support.

(F) The amount of investments generated for the state on behalf of each client through agency support.

(G) The amount of California jobs created by each client through agency support.

(H) The amount of overseas jobs created by each client through agency support to the extent that data is provided to the agency.

(I) The amount of trade leads created through each client.

(J) A profile of each client served, including, but not limited to, all of the following:

(i) Whether the client was from a small, medium, or large sized firm.

(ii) Whether the client was a first time exporter or investor.

(iii) The type of industry of the client.

(K) Any changes in baseline information.

(2) It is the intent of the Legislature that the agency may include the annual reports required to be submitted pursuant to paragraph (1) with other reports it normally submits to the Legislature.

SEC. 22. Section 15605.5 is added to the Government Code, to read:

15605.5. Notwithstanding any other law, but consistent with Section 4 of Article VII of the California Constitution and Section 12010.5, each member of the State Board of Equalization elected by district may request that the Governor convert one civil service position of the board to be exempt from civil service and serve as an administrative assistant at or below the nonsupervisory exempt salary level P2A, who shall be appointed by and shall serve at the pleasure of the Governor.

SEC. 23. Section 16320 is added to the Government Code, to read:

16320. (a) Unless otherwise prohibited by law, moneys in the State Treasury may be loaned from one state fund or account to any other state fund or account to address the 2002-03 fiscal year budgetary shortfall, subject to all of the following conditions:

(1) The loan is authorized in the 2002 Budget Act.

(2) The terms and conditions of the loan, including an interest rate, are set forth in the loan authorization.

(3) The loan is considered part of the balance of the fund or account that received the funds for the purpose of accounting and budgeting, including any determination made pursuant to Section 13307.

(4) The loan is not deducted from the balance of the fund or account from which the loan is made for purposes of calculating a fee or assessment.

(5) A fee or assessment may not be increased as a result of a loan.

(6) Moneys loaned under this section shall not be considered a transfer of resources for purposes of determining the legality of the use of those moneys by the fund or account from which the loan is made or the fund or account that received the loan.

(b) (1) The Director of Finance shall order the repayment of all or a portion of any loan made pursuant to subdivision (a) if he or she determines that either of the following circumstances exists:

(A) The fund or account from which the loan was made has a need for the moneys.

(B) There is no longer a need for the moneys in the fund or account that received the loan.

(2) The Director of Finance shall notify, in writing, the Chairperson of the Joint Legislative Budget Committee within 30 days of ordering the repayment of any of these loans.

(c) On August 1 of each year, the Director of Finance shall report in writing to the Chairperson of the Joint Legislative Budget Committee the balances of these loans as of the preceding June 30. On February 1 of each year, the Director of Finance shall provide an updated report to the Chairperson of the Joint Legislative Budget Committee on the balances of these outstanding loans, as reflected in the preceding Governor's Budget.

SEC. 24. Section 16429.1 of the Government Code is amended to read:

16429.1. (a) There is in the State Treasury the Local Agency Investment Fund, which fund is hereby created. Notwithstanding Section 13340, all money in the fund is hereby appropriated without regard to fiscal years to carry out the purpose of this section. The Controller shall maintain a separate account for each governmental unit having deposits in this fund.

(b) Notwithstanding any other provisions of law, a local governmental official, with the consent of the governing body of that agency, having money in its treasury not required for immediate needs, may remit the money to the Treasurer for deposit in the Local Agency Investment Fund for the purpose of investment.

(c) Notwithstanding any other provisions of law, an officer of any nonprofit corporation whose membership is confined to public agencies or public officials, or an officer of a qualified quasi-governmental agency, with the consent of the governing body of that agency, having money in its treasury not required for immediate needs, may remit the money to the Treasurer for deposit in the Local Agency Investment Fund for the purpose of investment.

(d) Notwithstanding any other provision of law or of this section, a local agency, with the approval of its governing body, may deposit in the Local Agency Investment Fund proceeds of the issuance of bonds, notes, certificates of participation, or other evidences of indebtedness of the agency pending expenditure of the proceeds for the authorized purpose of their issuance. In connection with these deposits of proceeds, the Local Agency Investment Fund is authorized to receive and disburse moneys, and to provide information, directly with or to an authorized officer of a trustee or fiscal agent engaged by the local agency, the Local Agency Investment Fund is authorized to hold investments in the name and for the account of that trustee or fiscal agent, and the Controller shall maintain a separate account for each deposit of proceeds.

(e) The local governmental unit, the nonprofit corporation, or the quasi-governmental agency has the exclusive determination of the length of time its money will be on deposit with the Treasurer.

(f) The trustee or fiscal agent of the local governmental unit has the exclusive determination of the length of time proceeds from the issuance of bonds will be on deposit with the Treasurer.

(g) The Local Investment Advisory Board shall determine those quasi-governmental agencies which qualify to participate in the Local Agency Investment Fund.

(h) The Treasurer may refuse to accept deposits into the fund if, in the judgment of the Treasurer, the deposit would adversely affect the state's portfolio.

(i) The Treasurer may invest the money of the fund in securities prescribed in Section 16430. The Treasurer may elect to have the money of the fund invested through the Surplus Money Investment Fund as provided in Article 4 (commencing with Section 16470) of Chapter 3 of Part 2 of Division 4 of Title 2.

(j) Money in the fund shall be invested to achieve the objective of the fund which is to realize the maximum return consistent with safe and prudent treasury management.

(k) All instruments of title of all investments of the fund shall remain in the Treasurer's vault or be held in safekeeping under control of the Treasurer in any federal reserve bank, or any branch thereof, or the Federal Home Loan Bank of San Francisco, with any trust company, or the trust department of any state or national bank.

(*l*) Immediately at the conclusion of each calendar quarter, all interest earned and other increment derived from investments shall be distributed by the Controller to the contributing governmental units or trustees or fiscal agents, nonprofit corporations, and quasi-governmental agencies in amounts directly proportionate to the respective amounts deposited in the Local Agency Investment Fund and the length of time the amounts remained therein. An amount equal to the reasonable costs incurred in carrying out the provisions of this section, not to exceed a maximum of one-half of 1 percent of the earnings of this fund, shall be deducted from the earnings prior to distribution. The amount of this deduction shall be credited as reimbursements to the state agencies, including the Treasurer, the Controller, and the Department of Finance, having incurred costs in carrying out the provisions of this section.

(m) The Treasurer shall prepare for distribution a monthly report of investments made during the preceding month.

(n) As used in this section, ''local agency,'' ''local governmental unit,'' and "local governmental official'' includes a campus or other unit and an official, respectively, of the California State University who

deposits moneys in funds described in Sections 89721, 89722, and 89725 of the Education Code.

SEC. 25. Section 16475 of the Government Code is amended to read:

16475. As of December 31 and June 30 all interest earned and other increment derived from investments made pursuant to this article shall, on order of the Controller, be deposited in the Surplus Money Investment Fund. The Controller, after deducting an amount equal to the reasonable costs incurred by the Treasurer, the Controller, and the Department of Finance in carrying out this article, shall apportion, as of December 31st and June 30th of each year, to the following funds in the Treasury, interest earned or increment derived from the investments authorized by this article for the six calendar months ending with those dates:

(a) The General Fund.

(b) Each fund into which are deposited or which contains moneys collected from any tax now or hereafter imposed by this state upon the manufacture, sale, distribution, or use of motor vehicle fuel, for use in motor vehicles upon the public streets and highways.

(c) Each fund into which are deposited or which contains moneys collected from motor vehicle and other vehicle registration license fees or from any other tax or license fee now or hereafter imposed by the state upon vehicles, motor vehicles or the operation thereof, except those taxes and license fees that, by the provisions of Section 7 of Article XIX of the California Constitution, are exempted from the provisions of Section 2 of Article XIX.

(d) Each fund into which are deposited or that contains moneys collected under any law of this state relating to the protection, conservation, propagation, or preservation of fish, game, mollusks, or crustaceans, and fines imposed by any court for the violation of any of those laws.

(e) Each fund into which are deposited or that contains moneys available for construction, repair, replacement, maintenance or operation of public works of the state, including, but not limited to, the facilities of the State Water Resources Development System, as defined in Section 12931 of the Water Code, toll facilities financed, built, or acquired pursuant to the California Toll Bridge Authority Act (Chapter 1 (commencing with Section 30000) of Division 17 of the Streets and Highways Code), or moneys available for the payment of principal or interest on bonds issued to provide for the construction of those facilities.

(f) Every other fund in respect to which the Director of Finance on the advice of the Attorney General determines that the operation of the California Constitution or the United States Constitution prohibits the

expenditure of interest received under this article and allocated on the basis of amounts in that fund for General Fund purposes.

(g) Each fund not included within subdivisions (a) to (f), inclusive.

The apportionments shall be made by the Controller in the following manner:

(1) All money not apportioned to the funds referred to in subdivisions (b), (c), (d), (e), (f), and (g) shall be apportioned to the General Fund.

(2) There shall be apportioned to each of the funds referred to in subdivisions (b), (c), (d), (e), (f), and (g), an amount directly proportionate to the respective amounts transferred from those funds to the Surplus Money Investment Fund and the length of time the amounts remained therein.

(3) Interest accrued or paid to the Pooled Money Investment Account from the proceeds of tax-exempt obligations on loans made pursuant to Section 16312 or 16313, to the extent thereof, shall be deemed apportioned to the State Highway Account or any other accounts that may be designated by the Controller pursuant to Section 16654, but only to the extent of its proportionate earnings as determined under paragraph (2). This paragraph shall neither increase nor decrease the amount of earnings apportioned to any fund or account in accordance with this section. These moneys shall be deemed expended (or applied to reimburse expenditures previously paid) first following the allocation of these interest earnings of the Surplus Money Investment Fund to the State Highway Account or any other accounts that may be designated by the Controller pursuant to Section 16654. It is the intent of the Legislature that this paragraph shall authorize the Treasurer and the Controller to monitor the expenditure of the proceeds of tax-exempt obligations in order to comply with federal tax laws and shall neither increase nor decrease the amount of bonds, notes, or other obligations to be issued by the state or any subdivision thereof, nor shall this paragraph be interpreted to indicate that the allocation is contrary to any bond act.

SEC. 26. Section 16475.5 of the Government Code is amended to read:

16475.5. Notwithstanding the provisions of Section 16475, as of December 31 and June 30 each year all interest earned and other increment derived from the investment pursuant to this article of money of the Fish and Game Preservation Fund, less the expenses incurred by the Treasurer, the Controller, and the Department of Finance under this article in connection with the investment of this money, shall be transferred to the Fish and Game Preservation Fund.

SEC. 27. Section 16724.6 of the Government Code is amended to read:

16724.6. There is hereby transferred from any bond fund created for the proceeds of sales of state general obligation bonds, the amounts necessary to reimburse the Treasurer, the Controller, and the Department of Finance for actual expenses incurred in: (1) administering or reviewing loans from the Pooled Money Investment Account to the bond fund including review by the Public Works Board staff, (2) assuring bond program compliance with federal laws and regulations related to tax-exempt government obligations by tracking arbitrage and expenditures, calculating and remitting federal rebates and penalties, investing bond sale proceeds, establishing and maintaining special accounting systems, and providing other services the Treasurer determines are necessary to maintain the tax-exempt status of the bonds.

SEC. 28. Section 16727 of the Government Code is amended to read:

16727. Proceeds from the sale of any bonds issued pursuant to this chapter shall be used only for the following purposes:

(a) The costs of construction or acquisition of capital assets. ''Capital assets'' mean tangible physical property with an expected useful life of 15 years or more. ''Capital assets'' also means tangible physical property with an expected useful life of 10 to 15 years, but these costs may not exceed 10 percent of the bond proceeds net of all issuance costs. ''Capital assets'' include major maintenance, reconstruction, demolition for purposes of reconstruction of facilities, and retrofitting work that is ordinarily done no more often than once every 5 to 15 years or expenditures that continue or enhance the useful life of the capital asset. ''Capital assets'' also include equipment with an expected useful life of two years or more. Costs allowable under this section include costs incidentally but directly related to construction or acquisition, including, but not limited to, planning, engineering, construction management, architectural, and other design work, environmental impact reports and assessments, required mitigation expenses, appraisals, legal expenses, site acquisitions, and necessary easements.

(b) To make grants or loans, if the proceeds of the grants or loans are used for the costs of construction or acquisition of capital assets. Bond proceeds may also be used to pay the costs of a state agency for administering the grant or loan program.

(c) To repay funds borrowed in anticipation of the sale of the bonds, including interest, or to pay interest on the bonds themselves.

(d) To pay the costs of a state agency with responsibility for administering the bond program. These costs include those incurred by the Treasurer, the Controller, the Department of Finance, and the Public Works Board for staff, operating expenses and equipment, and consultants' costs.

(e) The costs of the Treasurer's office directly associated with the sale and payment of the bonds, including, but not limited to, underwriting discounts, costs of printing, bond counsel, registration, and fees of trustees.

Nothing in this section is intended to prohibit the investment of bond proceeds or the use of proceeds of those investments in any manner authorized by law.

SEC. 29. Section 16731.6 of the Government Code is amended to read:

16731.6. (a) Notwithstanding any other provision of this chapter, and as an alternative to the procedures set forth in Section 16731, the committee may provide for the issuance of all or part of the bonds authorized to be issued as commercial paper notes. The committee shall adopt a resolution finding that issuance of the bonds in the form of commercial paper notes is necessary and desirable, directing the Treasurer to arrange for preparation of the requisite number of suitable notes, and specifying other provisions relating to the commercial paper notes including the following:

(1) For each program of commercial paper notes authorized, the final date of maturity and the total aggregate principal amount of the commercial paper notes authorized to be outstanding at any one time up to the maturity date. The resolution may provide that the commercial paper notes may be issued and renewed from time to time until the final maturity date, and that the amount issued from time to time may be set by the Treasurer up to the maximum amount authorized to be outstanding at any one time. The resolution shall include methods of setting the dates, numbers, and denominations of the commercial paper notes. Determination of the final maturity date and total amount by the committee shall be made upon recommendation of the Treasurer to meet the needs of the state for funds, to provide the maximum benefit to potential purchasers, and to respond to the expected demand for the commercial paper notes. Notwithstanding any other provision of this chapter, whenever the committee determines to issue commercial paper notes, the committee need not comply with the requirements of Section 16732.

(2) The method of setting the interest rates and interest payment dates applicable to the commercial paper notes. Commercial paper notes may bear a state rate of interest payable only at maturity, which rate or rates may be determined at the time of sale of each unit of commercial paper notes. The rate of interest borne by the commercial paper notes shall not exceed 11 percent per annum. Notwithstanding any other provision of this chapter, whenever the committee determines to issue commercial paper notes, the committee need not comply with the requirements of Section 16733.

(3) Any provisions for the redemption of the commercial paper notes prior to stated maturity.

(4) The technical form and language of the commercial paper notes.

(5) All other terms and conditions of the commercial paper notes and of their execution, issuance, and sale, deemed necessary and appropriate by the committee.

(b) Notwithstanding any other provision of this chapter, when the committee determines to issue commercial paper notes, all of the following shall apply:

(1) The commercial paper notes may be sold at negotiated sale at a price below the par value in a manner consistent with paragraph (2) of subdivision (a).

(2) For purposes of determining the principal amount of bonds of any voted authorization outstanding, in the case of any commercial paper notes, the principal amount deemed outstanding at any time during the term of a program of commercial paper notes shall be the maximum amount authorized in the resolution.

(3) During the term of any program of commercial paper notes, the renewal and reissuance from time to time of the commercial paper notes in an amount up to the maximum amount authorized by the resolution shall be deemed to be a refunding of the previously maturing amount, permitted by and consistent with Article 6 (commencing with Section 16780).

(4) Consistent with the intent for the General Fund to realize a savings in debt service costs when commercial paper notes are issued in place of bonds without shifting or adding financing and debt service costs to the bond funds, the state administrative costs of commercial paper and interest payable and other costs associated with commercial paper notes shall be paid for as follows:

(A) The proceeds of commercial paper notes are, notwithstanding Section 13340, continuously appropriated to pay the state administrative costs of commercial paper including, but not limited to, costs of the Treasurer's office, the Controller's office, and the Department of Finance.

(B) The interest payable on maturing commercial paper notes and other costs associated with commercial paper notes not specified in paragraph (A), including, but not limited to, remarketing fees, issuing and paying agent fees, the letter or line of credit provider fees, the rating agency fees, and bond counsel fees, shall be paid from the General Fund which, notwithstanding Section 13340, is continuously appropriated to pay the interests and costs.

SEC. 30. Section 17311 of the Government Code is amended to read:

17311. There is hereby appropriated from the General Fund without regard to fiscal years, two hundred fifty thousand dollars ($250,000) which shall be set aside in a special account entitled State Notes Expense Account, and shall be used to pay expenses incurred by the Treasurer, Controller, or the Department of Finance in providing for the preparation, sale, issuance, advertising, legal services, or any other act which, in the discretion of the Treasurer or the Department of Finance, is necessary to carry out the purposes of this part. This account shall operate as a revolving fund and whenever notes are sold, out of the first money realized from their sale, any remaining expenses shall be paid and then there shall be redeposited in the account any amounts that have been expended for the above purposes, which amounts may be used for the same purposes and repaid in the same manner whenever additional sales are made.

SEC. 30.2. Section 17551 of the Government Code is amended to read:

17551. (a) The commission, pursuant to the provisions of this chapter, shall hear and decide upon a claim by a local agency or school district that the local agency or school district is entitled to be reimbursed by the state for costs mandated by the state as required by Section 6 of Article XIII B of the California Constitution.

(b) Commission review of claims may be had pursuant to subdivision (a) only if the test claim is filed within the time limits specified in this section.

(c) Local agency and school district test claims shall be filed not later than three years following the date the mandate became effective, or in the case of mandates that became effective before January 1, 2002, the time limit shall be one year from the effective date of this subdivision.

(d) The commission, pursuant to the provisions of this chapter, shall hear and decide upon a claim by a local agency or school district filed on or after January 1, 1985, that the Controller has incorrectly reduced payments to the local agency or school district pursuant to paragraph (2) of subdivision (d) of Section 17561.

SEC. 30.4. Section 17558.5 of the Government Code is amended to read:

17558.5. (a) A reimbursement claim for actual costs filed by a local agency or school district pursuant to this chapter is subject to audit by the Controller no later than two years after the end of the calendar year in which the reimbursement claim is filed or last amended. However, if no funds are appropriated for the program for the fiscal year for which the claim is made, the time for the Controller to initiate an audit shall commence to run from the date of initial payment of the claim.

(b) The Controller shall notify the claimant in writing within 30 days after issuance of a remittance advice of any adjustment to a claim for

reimbursement that results from an audit or review. The notification shall specify the claim components adjusted, the amounts adjusted, interest charges on claims adjusted to reduce the overall reimbursement to the local agency or school district, and the reason for the adjustment. Remittance advices and other notices of payment action shall not constitute notice of adjustment from an audit or review.

(c) The interest rate charged by the Controller on reduced claims shall be set at the Pooled Money Investment Account rate and shall be imposed on the dollar amount of the overpaid claim from the time the claim was paid until overpayment is satisfied.

(d) Nothing in this section shall be construed to limit the adjustment of payments when inaccuracies are determined to be the result of the intent to defraud, or when a delay in the completion of an audit is the result of willful acts by the claimant or inability to reach agreement on terms of final settlement.

SEC. 30.6. Section 17561 of the Government Code is amended to read:

17561. (a) The state shall reimburse each local agency and school district for all ''costs mandated by the state,'' as defined in Section 17514.

(b) (1) For the initial fiscal year during which these costs are incurred, reimbursement funds shall be provided as follows:

(A) Any statute mandating these costs shall provide an appropriation therefor.

(B) Any executive order mandating these costs shall be accompanied by a bill appropriating the funds therefor, or alternatively, an appropriation for these costs shall be included in the Budget Bill for the next succeeding fiscal year. The executive order shall cite that item of appropriation in the Budget Bill or that appropriation in any other bill which is intended to serve as the source from which the Controller may pay the claims of local agencies and school districts.

(2) In subsequent fiscal years appropriations for these costs shall be included in the annual Governor's Budget and in the accompanying Budget Bill. In addition, appropriations to reimburse local agencies and school districts for continuing costs resulting from chaptered bills or executive orders for which claims have been awarded pursuant to subdivision (a) of Section 17551 shall be included in the annual Governor's Budget and in the accompanying Budget Bill subsequent to the enactment of the local government claims bill pursuant to Section 17600 that includes the amounts awarded relating to these chaptered bills or executive orders.

(c) The amount appropriated to reimburse local agencies and school districts for costs mandated by the state shall be appropriated to the Controller for disbursement.

(d) The Controller shall pay any eligible claim pursuant to this section within 60 days after the filing deadline for claims for reimbursement or 15 days after the date the appropriation for the claim is effective, whichever is later. The Controller shall disburse reimbursement funds to local agencies or school districts if the costs of these mandates are not payable to state agencies, or to state agencies that would otherwise collect the costs of these mandates from local agencies or school districts in the form of fees, premiums, or payments. When disbursing reimbursement funds to local agencies or school districts, the Controller shall disburse them as follows:

(1) For initial reimbursement claims, the Controller shall issue claiming instructions to the relevant local agencies pursuant to Section 17558. Issuance of the claiming instructions shall constitute a notice of the right of the local agencies and school districts to file reimbursement claims, based upon parameters and guidelines adopted by the commission.

(A) When claiming instructions are issued by the Controller pursuant to Section 17558 for each mandate determined pursuant to Section 17555 that requires state reimbursement, each local agency or school district to which the mandate is applicable shall submit claims for initial fiscal year costs to the Controller within 120 days of the issuance date for the claiming instructions.

(B) When the commission is requested to review the claiming instructions pursuant to Section 17571, each local agency or school district to which the mandate is applicable shall submit a claim for reimbursement within 120 days after the commission reviews the claiming instructions for reimbursement issued by the Controller.

(C) If the local agency or school district does not submit a claim for reimbursement within the 120-day period, or submits a claim pursuant to revised claiming instructions, it may submit its claim for reimbursement as specified in Section 17560. The Controller shall pay these claims from the funds appropriated therefor, provided that the Controller (i) may audit the records of any local agency or school district to verify the actual amount of the mandated costs, and (ii) may reduce any claim that the Controller determines is excessive or unreasonable.

(2) In subsequent fiscal years each local agency or school district shall submit its claims as specified in Section 17560. The Controller shall pay these claims from funds appropriated therefor, provided that the Controller (A) may audit the records of any local agency or school district to verify the actual amount of the mandated costs, (B) may reduce any claim that the Controller determines is excessive or unreasonable, and (C) shall adjust the payment to correct for any underpayments or overpayments which occurred in previous fiscal years.

(3) When paying a timely filed claim for initial reimbursement, the Controller shall withhold 20 percent of the amount of the claim until the claim is audited to verify the actual amount of the mandated costs. All initial reimbursement claims for all fiscal years required to be filed on their initial filing date for a state-mandated local program shall be considered as one claim for the purpose of computing any late claim penalty. Any claim for initial reimbursement filed after the filing deadline shall be reduced by 10 percent of the amount that would have been allowed had the claim been timely filed. The Controller may withhold payment of any late claim for initial reimbursement until the next deadline for funded claims unless sufficient funds are available to pay the claim after all timely filed claims have been paid. In no case shall a reimbursement claim be paid if submitted more than one year after the filing deadline specified in the Controller's claiming instructions on funded mandates contained in a claims bill.

SEC. 30.8. 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 state-mandated local programs imperative. Accordingly, it is the intent of the Legislature to increase information regarding state mandates and establish a method for regularly reviewing the costs and benefits of state-mandated local programs.

(b) The Controller shall submit a report to the Joint Legislative Budget Committee and fiscal committees by January 1 of each year. This report shall summarize, by state mandate, the total amount of claims paid per fiscal year and the amount, if any, of mandate deficiencies or surpluses. This report shall be made available in an electronic spreadsheet format. The report shall compare the annual cost of each mandate to the statewide cost estimate adopted by the commission.

(c) After the commission submits its second semiannual report to the Legislature pursuant to Section 17600, the Legislative Analyst shall submit a report to the Joint Legislative Budget Committee and legislative fiscal committees on the mandates included in the commission's reports. The report shall make recommendations as to whether the mandate should be repealed, funded, suspended, or modified.

(d) In its annual analysis of the Budget Bill and based on information provided pursuant to subdivision (b), the Legislative Analyst shall identify mandates that significantly exceed the statewide cost estimate adopted by the commission. The Legislative Analyst shall make recommendations on whether the mandate should be repealed, funded, suspended, or modified.

(e) (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 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.

(f) 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 (e).

(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. 30.9. Section 17564 of the Government Code is amended to read:

17564. (a) No claim shall be made pursuant to Sections 17551 and 17561, nor shall any payment be made on claims submitted pursuant to Sections 17551 and 17561, unless these claims exceed one thousand dollars ($1,000), provided that a county superintendent of schools or county may submit a combined claim on behalf of school districts, direct service districts, or special districts within their county if the combined claim exceeds one thousand dollars ($1,000) even if the individual school district's, direct service district's, or special district's claims do not each exceed one thousand dollars ($1,000). The county superintendent of schools or the county shall determine if the submission of the combined claim is economically feasible and shall be responsible for disbursing the funds to each school, direct service, or special district. These combined claims may be filed only when the county superintendent of schools or the county is the fiscal agent for the districts. All subsequent claims based upon the same mandate shall only be filed in the combined form unless a school district, direct service district, or special district provides to the county superintendent of schools or county and to the Controller, at least 180 days prior to the deadline for filing the claim, a written notice of its intent to file a separate claim.

(b) Claims for direct and indirect costs filed pursuant to Section 17561 shall be filed in the manner prescribed in the parameters and guidelines.

SEC. 31. Section 68087 is added to the Government Code, to read:

68087. (a) A state surcharge of 10 percent shall be levied on any fee specified in paragraph (1) of subdivision (c) of Section 68085. This surcharge shall be in addition to any other court-related fee.

(b) The clerk of the court shall cause the amount collected to be transmitted to the Trial Court Trust Fund.

(c) It is the intent of the Legislature that nothing in this section shall change the existing distribution or amounts of the fees specified in paragraph (1) of subdivision (c) of Section 68085 provided to local jurisdictions and the state.

(d) This section shall become inoperative on July 1, 2007, and as of January 1, 2008, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2008, deletes or extends that date.

SEC. 32. Section 18909 of the Health and Safety Code is amended to read:

18909. (a) ''Building standard'' means any rule, regulation, order, or other requirement, including any amendment or repeal of that requirement, that specifically regulates, requires, or forbids the method of use, properties, performance, or types of materials used in the construction, alteration, improvement, repair, or rehabilitation of a building, structure, factory-built housing, or other improvement to real

property, including fixtures therein, and as determined by the commission.

(b) Except as provided in subdivision (d), ''building standard'' includes architectural and design functions of a building or structure, including, but not limited to, number and location of doors, windows, and other openings, stress or loading characteristics of materials, and methods of fabrication, clearances, and other functions.

(c) ''Building standard'' includes a regulation or rule relating to the implementation or enforcement of a building standard not otherwise governed by statute, but does not include the adoption of procedural ordinances by a city or other public agency relating to civil, administrative, or criminal procedures and remedies available for enforcing code violations.

(d) ''Building standard'' does not include any safety regulations that any state agency is authorized to adopt relating to the operation of machinery and equipment used in manufacturing, processing, or fabricating, including, but not limited to, warehousing and food processing operations, but not including safety regulations relating to permanent appendages, accessories, apparatus, appliances, and equipment attached to the building as a part thereof, as determined by the commission.

(e) ''Building standard'' does not include temporary scaffoldings and similar temporary safety devices and procedures, that are used in the erection, demolition, moving, or alteration of buildings.

(f) ''Building standard'' does not include any regulation relating to the internal management of a state agency.

(g) ''Building standard'' does not include any regulation, rule, order, or standard that pertains to mobilehomes, manufactured homes, commercial coaches, special purpose commercial coaches, or recreational vehicles.

(h) ''Building standard'' does not include any regulation, rule, or order or standard that pertains to a mobilehome park, recreational vehicle park, temporary recreational vehicle park, or travel trailer park, except that ''building standard'' includes the construction of permanent buildings and plumbing, electrical, and fuel gas equipment and installations within permanent buildings in mobilehome parks, recreational vehicle parks, temporary recreational vehicle parks, or travel trailer parks. For purposes of this subdivision, ''permanent building'' means any permanent structure constructed in the mobilehome park, recreational vehicle park, temporary recreational vehicle park, or travel trailer park that is a permanent facility under the control and ownership of the park operator.

(i) ''Building standard'' does not include any regulation, rule, order, or standard that pertains to mausoleums regulated under Part 5 (commencing with Section 9501) of Division 8.

(j) ''Building standard'' does not include any regulation adopted by the California Integrated Waste Management Board, the Department of Toxic Substances Control, the Occupational Safety and Health Standards Board, or the State Water Resources Control Board concerning the discharge of waste to land or the treatment, transfer, storage, resource recovery, disposal, or recycling of the waste.

SEC. 33. Section 18913 of the Health and Safety Code is amended to read:

18913. ''Emergency standard'' means a building standard or an order of repeal of a building standard filed for publication in the code by the commission pursuant to Section 11346.1 of the Government Code.

SEC. 34. Section 18937 of the Health and Safety Code is amended to read:

18937. (a) Emergency standards shall be acted on by the commission within 30 days and only when the adopting agency or state agency that proposes the building standards has made the finding of emergency required by Sections 11346.1 and 11346.5 of the Government Code and the adopting agencies have adopted the emergency standard in compliance with Section 11346.1 of the Government Code, and the commission concurs with that finding. Both the concurrence and the approval of the emergency building standards require an affirmative vote of two-thirds of the members of the commission attending a meeting, or not less than six affirmative votes, whichever is greater.

(b) Emergency standards approved by the commission pursuant to subdivision (a) shall be filed by the commission pursuant to Section 11346.1 of the Government Code and shall be subject to that section.

SEC. 35. Section 18938 of the Health and Safety Code is amended to read:

18938. (a) Building standards shall be filed with the Secretary of State and codified only after they have been approved by the commission and shall not be published in any other title of the California Code of Regulations. Emergency building standards shall be filed with the Secretary of State and shall take effect only after they have been approved by the commission as required by Section 18937. The filing of building standards adopted or approved pursuant to this part, or any certification with respect thereto, with the Secretary of State, or elsewhere as required by law, shall be done solely by the commission.

(b) The building standards contained in the Uniform Fire Code of the International Conference of Building Officials and the Western Fire Chiefs Association, Inc., the Uniform Building Code of the International

Conference of Building Officials, Appendix Chapter 1 of the Uniform Code for Building Conservation of the International Conference of Building Officials, the Uniform Plumbing Code of the International Association of Plumbing and Mechanical Officials, the National Electrical Code of the National Fire Protection Association, and the Uniform Mechanical Code of the International Conference of Building Officials and the International Association of Plumbing and Mechanical Officials, as referenced in the California Building Standards Code, shall apply to all occupancies throughout the state and shall become effective 180 days after publication in the California Building Standards Code by the California Building Standards Commission or at a later date after publication established by the commission.

(c) Except as otherwise provided in this subdivision, an adoption, amendment, or repeal of a building standard shall become effective 180 days after its publication in the triennial edition of the California Building Standards Code or one of its supplements, or at any later date as approved by the California Building Standards Commission, with the exceptions of standards adopted pursuant to Section 25402 of the Public Resources Code and those regulations that implement or enforce building standards. Regulations that implement or enforce building standards shall become effective 30 days after filing by the commission with the Secretary of State. This subdivision shall not apply to emergency building standards. An amendment or a repeal of a building standard in the California Building Standards Code that, as determined by the commission, would result in a less restrictive regulation, shall become effective 30 days after filing of the amendment or repeal by the commission with the Secretary of State.

(d) Emergency standards defined in subdivision (a) of Section 18913 shall become effective when approved by the commission, and filed with the Secretary of State, or upon any later date specified therein, and remain in effect as provided by Section 11346.1 of the Government Code and Section 18937 of this code. Emergency standards shall be distributed as soon as practicable after publication to all interested and affected parties. Notice of repeal, pursuant to Section 11346.1 of the Government Code, of emergency standards defined in subdivision (a) of Section 18913 within the period specified by that section, shall also be given to the parties by the affected agencies promptly after the termination of the statutory period pursuant to Section 11346.1 of the Government Code.

(e) This section shall not be applicable to the time limits set forth in Sections 17922 and 17958 for approval of uniform codes and for changes by local agencies in the California Building Standards Code.

SEC. 36. Section 18942 of the Health and Safety Code is amended to read:

18942. (a) The commission shall publish, or cause to be published, editions of the code in its entirety once in every three years. In each intervening year the commission shall publish, or cause to be published, supplements as necessary. For emergency building standards defined in subdivision (a) of Section 18913, an emergency building standards supplement shall be published whenever the commission determines it is necessary.

(b) The commission shall publish the text of Article 2.5 (commencing with Section 115920) of Chapter 5 of Part 10 of Division 104, within the California Code of Regulations, Title 24, Part 2 requirements for single-family residential occupancies, with the following note:

"NOTE: These regulations are subject to local government modification. You should verify the applicable local government requirements at the time of application for a building permit."

(c) The commission may publish, stockpile, and sell at a reasonable price the code and any materials incorporated therein by reference if it deems the latter is insufficiently available to the public, or unavailable at a reasonable price. Each state department concerned and each city, county, or city and county shall have an up-to-date copy of the code available for public inspection.

(d) (1) Each city, county, and city and county, including charter cities, shall obtain and maintain with all revisions on a current basis, at least one copy of the building standards and other state regulations relating to buildings published in Titles 8, 19, 20, 24, and 25 of the California Code of Regulations. These codes shall be maintained in the office of the building official responsible for the administration and enforcement of this part.

(2) This subdivision shall not apply to any city or county which contracts for the administration and enforcement of the provisions of this part with another local government agency that complies with this section.

SEC. 37. Section 18943 of the Health and Safety Code is amended to read:

18943. Building standards in individual titles of the California Code of Regulations other than the California Building Standards Code shall have no force nor effect after January 1, 1985.

SEC. 38. Section 12907 is added to the Insurance Code, to read:

12907. The following existing positions in the Department of Insurance shall be appointed by the Governor and are exempt from the state civil service system:

(a) Chief executive officer.

(b) Deputy commissioner for the office of the ombudsman.

(c) Career executive assignment IV, in the administration and licensing services division.

SEC. 39. Section 62.5 of the Labor Code is amended to read:

62.5. (a) The Workers' Compensation Administration Revolving Fund is hereby created as a special account in the State Treasury. Money in the fund may be expended by the department, upon appropriation by the Legislature, for the administration of the workers' compensation program set forth in this division and Division 4 (commencing with Section 3200), other than the activities financed pursuant to Section 3702.5, and may not be used for any other purpose, except as determined by the Legislature.

(b) The fund shall consist of assessments made pursuant to this section. Costs of the program shall be shared on a proportional basis between the General Fund and employer assessments. The General Fund appropriation shall account for 80 percent, and employer assessments shall account for 20 percent, of the total costs of the program.

(c) Assessments shall be levied by the director upon all employers as defined in Section 3300. The total amount of the assessment shall be allocated between self-insured employers and insured employers in proportion to payroll respectively paid in the most recent year for which payroll information is available. The director shall promulgate reasonable rules and regulations governing the manner of collection of the assessment. The rules shall require the assessment to be paid by self-insurers to be expressed as a percentage of indemnity paid during the most recent year for which information is available, and the assessment to be paid by insured employers to be expressed as a percentage of premium. In no event shall the assessment paid by insured employers be considered a premium for computation of a gross premium tax or agents' commission.

SEC. 40. Section 142 of the Labor Code is amended to read:

142. The Division of Occupational Safety and Health shall enforce all occupational safety and health standards adopted pursuant to this chapter, and those heretofore adopted by the Industrial Accident Commission or the Industrial Safety Board. General safety orders heretofore adopted by the Industrial Accident Commission or the Industrial Safety Board shall continue to remain in effect, but they may be amended or repealed pursuant to this chapter.

SEC. 41. Section 142.3 of the Labor Code is amended to read:

142.3. (a) (1) The board, by an affirmative vote of at least four members, may adopt, amend or repeal occupational safety and health standards and orders. The board shall be the only agency in the state authorized to adopt occupational safety and health standards.

(2) The board shall adopt standards at least as effective as the federal standards for all issues for which federal standards have been

promulgated under Section 6 of the Occupational Safety and Health Act of 1970 (P.L. 91-596) within six months of the promulgation date of the federal standards and which, when applicable to products which are distributed or used in interstate commerce, are required by compelling local conditions and do not unduly burden interstate commerce.

(3) No standard or amendment to any standard adopted by the board that is substantially the same as a federal standard shall be subject to Article 5 (commencing with Section 11346) and Article 6 (commencing with Section 11349) of Chapter 3.5 of Part 1 of Division 3 of Title 2 of the Government Code. For purposes of this subdivision, ''substantially the same'' means identical to the federal standard with the exception of editorial and format differences needed to conform to other state laws and standards.

(4) If a federal standard is promulgated and no state standard that is at least as effective as the federal standard is adopted by the board within six months of the date of promulgation of the federal standard, the following provisions shall apply unless adoption of the state standard is imminent:

(A) If there is no existing state standard covering the same issues, the federal standard shall be deemed to be a standard adopted by the board and enforceable by the division pursuant to Section 6317. This standard shall not be subject to Article 5 (commencing with Section 11346) and Article 6 (commencing with Section 11349) of Chapter 3.5 of Part 1 of Division 3 of Title 2 of the Government Code.

(B) If a state standard is in effect at the time a federal standard is promulgated covering the same issue or issues, the board may adopt the federal standard, or a portion thereof, as a standard enforceable by the division pursuant to Section 6317; provided, however, if a federal standard or portion thereof is adopted which replaces an existing state standard or portion thereof, the federal standard shall be as effective as the state standard or portion thereof. No adoption of or amendment to any federal standard, or portion thereof shall be subject to Article 5 (commencing with Section 11346) and Article 6 (commencing with Section 11349) of Chapter 3.5 of Part 1 of Division 3 of Title 2 of the Government Code.

(C) Any state standard adopted pursuant to subparagraph (A) or (B) shall become effective at the time the standard is filed with the Secretary of State, unless otherwise provided, but shall not take effect before the effective date of the equivalent federal standard and shall remain in effect for six months unless readopted by the board for an additional six months or superseded by a standard adopted by the board pursuant to paragraph (2) of subdivision (a).

(D) Any standard adopted pursuant to subparagraph (A), (B), or (C), shall be published in Title 8 of the California Code of Regulations in a

manner similar to any other standards adopted pursuant to paragraphs (1) and (2) of subdivision (a) of this section.

(b) The State Building Standards Commission shall codify and publish in a semiannual supplement to the California Building Standards Code, or in a more frequent supplement if required by federal law, all occupational safety and health standards that would otherwise meet the definition of a building standard described in Section 18909 of the Health and Safety Code adopted by the board in the State Building Standards Code without reimbursement from the board. These occupational safety and health standards may also be published by the Occupational Safety and Health Standards Board in other provisions in Title 8 of the California Code of Regulations prior to publication in the California Building Standards Code if that other publication includes an appropriate identification of occupational safety and health standards contained in the other publication.

(c) Any occupational safety or health standard or order promulgated under this section shall prescribe the use of labels or other appropriate forms of warning as are necessary to ensure that employees are apprised of all hazards to which they are exposed, relevant symptoms and appropriate emergency treatment, and proper conditions and precautions for safe use or exposure. Where appropriate, these standards or orders shall also prescribe suitable protective equipment and control or technological procedures to be used in connection with these hazards and shall provide for monitoring or measuring employee exposure at such locations and intervals and in a manner as may be necessary for the protection of employees. In addition, where appropriate, the occupational safety or health standard or order shall prescribe the type and frequency of medical examinations or other tests which shall be made available, by the employer or at his or her cost, to employees exposed to such hazards in order to most effectively determine whether the health of such employee is adversely affected by this exposure.

(d) The results of these examinations or tests shall be furnished only to the Division of Occupational Safety and Health, the State Department of Health Services, any other authorized state agency, the employer, the employee, and, at the request of the employee, to his or her physician.

SEC. 42. Section 142.6 of the Labor Code is repealed.

SEC. 43. Section 1777.5 of the Labor Code is amended to read:

1777.5. (a) Nothing in this chapter shall prevent the employment of properly registered apprentices upon public works.

(b) Every apprentice employed upon public works shall be paid the prevailing rate of per diem wages for apprentices in the trade to which he or she is registered and shall be employed only at the work of the craft or trade to which he or she is registered.

(c) Only apprentices, as defined in Section 3077, who are in training under apprenticeship standards that have been approved by the Chief of the Division of Apprenticeship Standards and who are parties to written apprentice agreements under Chapter 4 (commencing with Section 3070) of Division 3 are eligible to be employed at the apprentice wage rate on public works. The employment and training of each apprentice shall be in accordance with either of the following:

(1) The apprenticeship standards and apprentice agreements under which he or she is training.

(2) The rules and regulations of the California Apprenticeship Council.

(d) When the contractor to whom the contract is awarded by the state or any political subdivision, in performing any of the work under the contract, employs workers in any apprenticeable craft or trade, the contractor shall employ apprentices in at least the ratio set forth in this section and may apply to any apprenticeship program in the craft or trade that can provide apprentices to the site of the public work for a certificate approving the contractor under the apprenticeship standards for the employment and training of apprentices in the area or industry affected. However, the decision of the apprenticeship program to approve or deny a certificate shall be subject to review by the Administrator of Apprenticeship. The apprenticeship program or programs, upon approving the contractor, shall arrange for the dispatch of apprentices to the contractor. A contractor covered by an apprenticeship program's standards shall not be required to submit any additional application in order to include additional public works contracts under that program. ''Apprenticeable craft or trade,'' as used in this section, means a craft or trade determined as an apprenticeable occupation in accordance with rules and regulations prescribed by the California Apprenticeship Council. As used in this section, ''contractor'' includes any subcontractor under a contractor who performs any public works not excluded by subdivision (o).

(e) Prior to commencing work on a contract for public works, every contractor shall submit contract award information to an applicable apprenticeship program that can supply apprentices to the site of the public work. The information submitted shall include an estimate of journeyman hours to be performed under the contract, the number of apprentices proposed to be employed, and the approximate dates the apprentices would be employed. A copy of this information shall also be submitted to the awarding body if requested by the awarding body. Within 60 days after concluding work on the contract, each contractor and subcontractor shall submit to the awarding body, if requested, and to the apprenticeship program a verified statement of the journeyman and apprentice hours performed on the contract. The information under

this subdivision shall be public. The apprenticeship programs shall retain this information for 12 months.

(f) The apprenticeship program that can supply apprentices to the area of the site of the public work shall ensure equal employment and affirmative action in apprenticeship for women and minorities.

(g) The ratio of work performed by apprentices to journeymen employed in a particular craft or trade on the public work may be no higher than the ratio stipulated in the apprenticeship standards under which the apprenticeship program operates where the contractor agrees to be bound by those standards, but, except as otherwise provided in this section, in no case shall the ratio be less than one hour of apprentice work for every five hours of journeyman work.

(h) This ratio of apprentice work to journeyman work shall apply during any day or portion of a day when any journeyman is employed at the jobsite and shall be computed on the basis of the hours worked during the day by journeymen so employed. Any work performed by a journeyman in excess of eight hours per day or 40 hours per week shall not be used to calculate the ratio. The contractor shall employ apprentices for the number of hours computed as above before the end of the contract or, in the case of a subcontractor, before the end of the subcontract. However, the contractor shall endeavor, to the greatest extent possible, to employ apprentices during the same time period that the journeymen in the same craft or trade are employed at the jobsite. Where an hourly apprenticeship ratio is not feasible for a particular craft or trade, the Chief of the Division of Apprenticeship Standards, upon application of an apprenticeship program, may order a minimum ratio of not less than one apprentice for each five journeymen in a craft or trade classification.

(i) A contractor covered by this section that has agreed to be covered by an apprenticeship program's standards upon the issuance of the approval certificate, or that has been previously approved for an apprenticeship program in the craft or trade, shall employ the number of apprentices or the ratio of apprentices to journeymen stipulated in the applicable apprenticeship standards, but in no event less than the 1-to-5 ratio required by subdivision (g).

(j) Upon proper showing by a contractor that he or she employs apprentices in a particular craft or trade in the state on all of his or her contracts on an annual average of not less than one hour of apprentice work for every five hours of labor performed by journeymen, the Chief of the Division of Apprenticeship Standards may grant a certificate exempting the contractor from the 1-to-5 hourly ratio, as set forth in this section for that craft or trade.

(k) An apprenticeship program has the discretion to grant to a participating contractor or contractor association a certificate, which

shall be subject to the approval of the Administrator of Apprenticeship, exempting the contractor from the 1-to-5 ratio set forth in this section when it finds that any one of the following conditions is met:

(1) Unemployment for the previous three-month period in the area exceeds an average of 15 percent.

(2) The number of apprentices in training in the area exceeds a ratio of 1 to 5.

(3) There is a showing that the apprenticeable craft or trade is replacing at least one-thirtieth of its journeymen annually through apprenticeship training, either on a statewide basis or on a local basis.

(4) Assignment of an apprentice to any work performed under a public works contract would create a condition that would jeopardize his or her life or the life, safety, or property of fellow employees or the public at large, or the specific task to which the apprentice is to be assigned is of a nature that training cannot be provided by a journeyman.

(*l*) When an exemption is granted pursuant to subdivision (k) to an organization that represents contractors in a specific trade from the 1-to-5 ratio on a local or statewide basis, the member contractors will not be required to submit individual applications for approval to local joint apprenticeship committees, if they are already covered by the local apprenticeship standards.

(m) (1) A contractor to whom a contract is awarded, who, in performing any of the work under the contract, employs journeymen or apprentices in any apprenticeable craft or trade shall contribute to the California Apprenticeship Council the same amount that the director determines is the prevailing amount of apprenticeship training contributions in the area of the public works site. A contractor may take as a credit for payments to the council any amounts paid by the contractor to an approved apprenticeship program that can supply apprentices to the site of the public works project. The contractor may add the amount of the contributions in computing his or her bid for the contract.

(2) At the conclusion of the 2003–04 fiscal year and each fiscal year thereafter, the California Apprenticeship Council shall distribute training contributions received by the council under this subdivision, less the expenses of the Division of Apprenticeship Standards for administering this subdivision, by making grants to approved apprenticeship programs for the purpose of training apprentices. The funds shall be distributed as follows:

(A) If there is an approved multiemployer apprenticeship program serving the same craft or trade and geographic area for which the training contributions were made to the council, a grant to that program shall be made.

(B) If there are two or more approved multiemployer apprenticeship programs serving the same craft or trade and geographic area for which

the training contributions were made to the council, the grant shall be divided among those programs based on the number of apprentices registered in each program.

(C) All training contributions not distributed under subparagraphs (A) and (B) shall be used to defray the future expenses of the Division of Apprenticeship Standards.

(3) All training contributions received pursuant to this subdivision shall be deposited in the Apprenticeship Training Contribution Fund, which fund is hereby created in the State Treasury. Notwithstanding Section 13340 of the Government Code, all money in the Apprenticeship Training Contribution Fund is hereby continuously appropriated for the purpose of carrying out this subdivision and to pay the expenses of the Division of Apprenticeship Standards.

(n) The body awarding the contract shall cause to be inserted in the contract stipulations to effectuate this section. The stipulations shall fix the responsibility of compliance with this section for all apprenticeable occupations with the prime contractor.

(o) This section does not apply to contracts of general contractors or to contracts of specialty contractors not bidding for work through a general or prime contractor when the contracts of general contractors or those specialty contractors involve less than thirty thousand dollars ($30,000).

(p) All decisions of an apprenticeship program under this section are subject to Section 3081.

SEC. 44. Section 830.5 of the Penal Code is amended to read:

830.5. The following persons are peace officers whose authority extends to any place in the state while engaged in the performance of the duties of their respective employment and for the purpose of carrying out the primary function of their employment or as required under Sections 8597, 8598, and 8617 of the Government Code. Except as specified in this section, these peace officers may carry firearms only if authorized and under those terms and conditions specified by their employing agency:

(a) A parole officer of the Department of Corrections or the Department of the Youth Authority, probation officer, deputy probation officer, or a board coordinating parole agent employed by the Youthful Offender Parole Board. Except as otherwise provided in this subdivision, the authority of these parole or probation officers shall extend only as follows:

(1) To conditions of parole or of probation by any person in this state on parole or probation.

(2) To the escape of any inmate or ward from a state or local institution.

(3) To the transportation of persons on parole or probation.

(4) To violations of any penal provisions of law which are discovered while performing the usual or authorized duties of his or her employment.

(5) To the rendering of mutual aid to any other law enforcement agency.

For the purposes of this subdivision, ''parole agent'' shall have the same meaning as parole officer of the Department of Corrections or of the Department of the Youth Authority.

Any parole officer of the Department of Corrections, the Department of the Youth Authority, or the Youthful Offender Parole Board is authorized to carry firearms, but only as determined by the director on a case-by-case or unit-by-unit basis and only under those terms and conditions specified by the director or chairperson. The Department of the Youth Authority shall develop a policy for arming peace officers of the Department of the Youth Authority who comprise ''high-risk transportation details'' or ''high-risk escape details'' no later than June 30, 1995. This policy shall be implemented no later than December 31, 1995.

The Department of the Youth Authority shall train and arm those peace officers who comprise tactical teams at each facility for use during ''high-risk escape details.''

(b) A correctional officer employed by the Department of Corrections or any employee of the Department of the Youth Authority having custody of wards or the Inspector General of the Youth and Adult Correctional Agency or any internal affairs investigator under the authority of the Inspector General or any employee of the Department of Corrections designated by the Director of Corrections or any correctional counselor series employee of the Department of Corrections or any medical technical assistant series employee designated by the Director of Corrections or designated by the Director of Corrections and employed by the State Department of Mental Health or employee of the Board of Prison Terms designated by the Secretary of the Youth and Adult Correctional Agency or employee of the Department of the Youth Authority designated by the Director of the Youth Authority or any superintendent, supervisor, or employee having custodial responsibilities in an institution operated by a probation department, or any transportation officer of a probation department.

(c) The following persons may carry a firearm while not on duty: a parole officer of the Department of Corrections or the Department of the Youth Authority, a correctional officer or correctional counselor employed by the Department of Corrections or any employee of the Department of the Youth Authority having custody of wards or any employee of the Department of Corrections designated by the Director of Corrections. A parole officer of the Youthful Offender Parole Board

may carry a firearm while not on duty only when so authorized by the chairperson of the board and only under the terms and conditions specified by the chairperson. Nothing in this section shall be interpreted to require licensure pursuant to Section 12025. The director or chairperson may deny, suspend, or revoke for good cause a person's right to carry a firearm under this subdivision. That person shall, upon request, receive a hearing, as provided for in the negotiated grievance procedure between the exclusive employee representative and the Department of Corrections, the Department of the Youth Authority, or the Youthful Offender Parole Board, to review the director's or the chairperson's decision.

(d) Persons permitted to carry firearms pursuant to this section, either on or off duty, shall meet the training requirements of Section 832 and shall qualify with the firearm at least quarterly. It is the responsibility of the individual officer or designee to maintain his or her eligibility to carry concealable firearms off duty. Failure to maintain quarterly qualifications by an officer or designee with any concealable firearms carried off duty shall constitute good cause to suspend or revoke that person's right to carry firearms off duty.

(e) The Department of Corrections shall allow reasonable access to its ranges for officers and designees of either department to qualify to carry concealable firearms off duty. The time spent on the range for purposes of meeting the qualification requirements shall be the person's own time during the person's off-duty hours.

(f) The Director of Corrections shall promulgate regulations consistent with this section.

(g) ''High-risk transportation details'' and ''high-risk escape details'' as used in this section shall be determined by the Director of the Youth Authority, or his or her designee. The director, or his or her designee, shall consider at least the following in determining ''high-risk transportation details'' and ''high-risk escape details'': protection of the public, protection of officers, flight risk, and violence potential of the wards.

(h) ''Transportation detail'' as used in this section shall include transportation of wards outside the facility, including, but not limited to, court appearances, medical trips, and interfacility transfers.

SEC. 45. Section 1203.1d of the Penal Code is amended to read:

1203.1d. (a) In determining the amount and manner of disbursement under an order made pursuant to this code requiring a defendant to make reparation or restitution to a victim of a crime, to pay any money as reimbursement for legal assistance provided by the court, to pay any cost of probation or probation investigation, to pay any cost of jail or other confinement, or to pay any other reimbursable costs, the court, after determining the amount of any fine and penalty assessments,

and a county financial evaluation officer when making a financial evaluation, shall first determine the amount of restitution to be ordered paid to any victim, and shall then determine the amount of the other reimbursable costs.

If payment is made in full, the payment shall be apportioned and disbursed in the amounts ordered by the court.

If reasonable and compatible with the defendant's financial ability, the court may order payments to be made in installments.

(b) With respect to installment payments and amounts collected by the Franchise Tax Board pursuant to Section 19280 of the Revenue and Taxation Code and subsequently transferred by the Controller pursuant to Section 19282 of the Revenue and Taxation Code, the board of supervisors shall provide that disbursements be made in the following order of priority:

(1) Restitution ordered to, or on behalf of, the victim pursuant to subdivision (f) of Section 1202.4.

(2) The state surcharge ordered pursuant to Section 1465.7.

(3) Any fines, penalty assessments, and restitution fines ordered pursuant to subdivision (b) of Section 1202.4. Payment of each of these items shall be made on a proportional basis to the total amount levied for all of these items.

(4) Any other reimburseable costs.

(c) The board of supervisors shall apply these priorities of disbursement to orders or parts of orders in cases where defendants have been ordered to pay more than one court order.

(d) Documentary evidence, such as bills, receipts, repair estimates, insurance payment statements, payroll stubs, business records, and similar documents relevant to the value of the stolen or damaged property, medical expenses, and wages and profits lost shall not be excluded as hearsay evidence.

SEC. 46. Section 1465.7 is added to the Penal Code, to read:

1465.7. (a) A state surcharge of 20 percent shall be levied on the base fine used to calculate the state penalty assessment as specified in subdivision (a) of Section 1464.

(b) This surcharge shall be in addition to the state penalty assessed pursuant to Section 1464 of the Penal Code and may not be included in the base fine used to calculate the state penalty assessment as specified in subdivision (a) of Section 1464.

(c) After a determination by the court of the amount due, the clerk of the court shall cause the amount of the state surcharge collected to be transmitted to the General Fund.

(d) Notwithstanding Chapter 12 (commencing with Section 76000) of Title 8 of the Government Code and subdivision (b) of Section 68090.8 of the Government Code, the full amount of the surcharge shall

be transmitted to the State Treasury to be deposited in the General Fund. Of the amount collected from the total amount of the fines, penalties, and surcharges imposed, the amount of the surcharge established by this section shall be transmitted to the State Treasury to be deposited in the General Fund.

(e) When any deposited bail is made for an offense to which this section applies, and for which a court appearance is not mandatory, the person making the deposit shall also deposit a sufficient amount to include the surcharge prescribed by this section.

(f) When amounts owed by an offender as a result of a conviction are paid in installment payments, payments shall be credited pursuant to Section 1203.1d. The amount of the surcharge established by this section shall be transmitted to the State Treasury prior to the county retaining or disbursing the remaining amount of the fines, penalties, and forfeitures imposed.

(g) This section shall become inoperative on July 1, 2007, and as of January 1, 2008, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2008, deletes or extends that date.

SEC. 47. Section 2933.3 is added to the Penal Code, to read:

2933.3. Notwithstanding any other provision of law, any inmate assigned to a conservation camp by the Department of Corrections who is eligible to earn one day of worktime credit for every one day of service pursuant to Section 2933 shall instead earn two days of worktime credit for every one day of service. This enhanced worktime credit shall only apply to service performed after January 1, 2003.

SEC. 48. Section 6045.8 of the Penal Code is amended to read:

6045.8. The Board of Corrections, in consultation with the State Department of Mental Health and the State Department of Alcohol and Drug Programs, shall create an evaluation design for mentally ill offender crime reduction grants that will assess the effectiveness of the program in reducing crime, the number of early releases due to jail overcrowding, and local criminal justice costs. Commencing on June 30, 2000, and annually thereafter, the board shall submit a report to the Legislature based on the evaluation design, with an interim report due on March 1, 2003, and a final report due on December 31, 2004.

SEC. 49. Section 13601 of the Penal Code is amended to read:

13601. (a) The CPOST shall develop, approve, and monitor standards for the selection and training of state correctional peace officer apprentices. Any standard for selection established under this subdivision shall be subject to approval by the State Personnel Board. Using the psychological and screening standards established by the State Personnel Board, the State Personnel Board or the Department of the Youth Authority shall ensure that, prior to training, each applicant who has otherwise qualified in all physical and other testing requirements to

be a peace officer in either a youth or adult correctional facility, is determined to be free from emotional or mental conditions that might adversely affect the exercise of his or her duties and powers as a peace officer.

(b) The CPOST may approve standards for a course in the carrying and use of firearms for correctional peace officers that is different from that prescribed pursuant to Section 832. The standards shall take into consideration the different circumstances presented within the institutional setting from that presented to other law enforcement agencies outside the correctional setting.

(c) Notwithstanding Section 3078 of the Labor Code, the length of the probationary period for correctional peace officer apprentices shall be determined by the CPOST subject to approval by the State Personnel Board, pursuant to Section 19170 of the Government Code.

(d) The CPOST shall develop, approve, and monitor standards for advanced rank-and-file and supervisory state correctional peace officer and training programs. When a correctional peace officer is promoted, he or she shall be provided with and be required to complete these secondary training experiences.

(e) The CPOST shall develop, approve, and monitor standards for the training of state correctional peace officers in the handling of stress associated with their duties.

(f) Toward the accomplishment of the objectives of this act, the CPOST may confer with, and may avail itself of the assistance and recommendations of, other state and local agencies, boards, or commissions.

(g) Notwithstanding the authority of the CPOST, the departments shall design and deliver training programs, shall conduct validation studies, and shall provide program support. The CPOST shall monitor program compliance by the departments.

(h) The CPOST may disapprove any training courses created by the departments pursuant to the standards developed by the commission if it determines that the courses do not meet the prescribed standards.

(i) The CPOST shall annually submit an estimate of costs to conduct those inquiries and audits as may be necessary to determine whether the departments and each of their institutions and parole regions are adhering to the standards developed by CPOST, and shall conduct such inquiries and audits consistent with the annual Budget Act.

(j) The CPOST shall establish and implement procedures for reviewing and issuing decisions concerning complaints or recommendations from interested parties regarding CPOST rules, regulations, standards, or decisions.

SEC. 50. Section 309.5 of the Public Utilities Code is amended to read:

309.5. (a) There is within the commission a division to represent the interests of public utility customers and subscribers within the jurisdiction of the commission. The goal of the division shall be to obtain the lowest possible rate for service consistent with reliable and safe service levels. The amendments made to this section during the 2001 portion of the 2001–02 Regular Session are not intended to expand the representation and responsibilities of the division.

(b) The director of the division shall be appointed by and serve at the pleasure of the Governor, subject to confirmation by the Senate. The director shall annually appear before the appropriate policy committees of the Assembly and the Senate to report on the activities of the division.

(c) The commission shall, by rule or order, provide for the assignment of personnel to, and the functioning of, the division. The division may employ experts necessary to carry out its functions. Personnel and resources shall be provided to the division at a level sufficient to ensure that customer and subscriber interests are fairly represented in all significant proceedings.

(d) The commission shall develop appropriate procedures to ensure that the existence of the division does not create a conflict of roles for any employee or his or her representative. The procedures shall include, but shall not be limited to, the development of a code of conduct and procedures for ensuring that advocates and their representatives on a particular case or proceeding are not advising decisionmakers on the same case or proceeding.

(e) The division may compel the production or disclosure of any information it deems necessary to perform its duties from entities regulated by the commission provided that any objections to any request for information shall be decided in writing by the assigned commissioner or by the president of the commission if there is no assigned commissioner.

(f) There is hereby created the Public Utilities Commission Ratepayer Advocate Account in the General Fund. Moneys from the Public Utilities Commission Utilities Reimbursement Account in the General Fund shall be transferred in the annual Budget Act to the Public Utilities Commission Ratepayer Advocate Account. The funds in the Public Utilities Commission Ratepayer Advocate Account shall be utilized exclusively by the division in the performance of its duties. The commission shall annually submit a staffing report containing a comparison of the staffing levels for each five-year period.

(g) On or before January 10 of each year, the commission shall provide to the chairperson of the fiscal committee of each house of the Legislature and to the Joint Legislative Budget Committee all of the following information:

(1) The number of personnel years assigned to the Office of Ratepayer Advocates.

(2) The total dollars expended by the Office of Ratepayer Advocates in the prior year, the estimated total dollars expended in the current year, and the total dollars proposed for appropriation in the following budget year.

(3) Workload standards and measures for the Office of Ratepayer Advocates.

(h) The division shall agree to meet and confer in an informal setting with a regulated entity prior to issuing a report or pleading to the commission regarding alleged misconduct, or a violation of a law or a commission rule or order, raised by the division in a complaint. The meet and confer process shall be utilized as an informal means of attempting to reach resolution or consensus on issues raised by the division regarding any regulated entity in the complaint proceeding.

SEC. 51. Section 3340 of the Public Utilities Code is amended to read:

3340. The authority is authorized and empowered to do any of the following:

(a) Adopt an official seal.

(b) Sue and be sued in its own name.

(c) Employ or contract with officers and employees to administer the authority. The authority may contract for the services of a chief executive officer, who shall serve at the pleasure of the board. If the chief executive officer contracts for the services of any other officer or employee, the contract shall be subject to the approval of the board.

(d) Exercise the power of eminent domain.

(e) Adopt rules and regulations for the regulation of its affairs and the conduct of its business.

(f) Do all things generally necessary or convenient to carry out its powers under, and the purposes of, this division.

SEC. 52. Section 13563 of the Revenue and Taxation Code is amended to read:

13563. (a) For purposes of determining interest on overpayments for periods beginning before July 1, 2002, interest shall be allowed and paid upon any overpayment of tax due under this part in the same manner as provided in Sections 6621(a)(1) and 6622 of the Internal Revenue Code.

(b) For purposes of determining interest on overpayments for periods beginning on or after July 1, 2002, interest shall be allowed and paid upon any overpayment of tax due under this part at the lesser of the following:

(1) Five percent.

(2) The bond equivalent rate of 13-week United States Treasury bills, determined as follows:

(A) The bond equivalent rate of 13-week United States Treasury bills established at the first auction held during the month of January shall be utilized for determining the appropriate rate for the following July 1 to December 31, inclusive.

(B) The bond equivalent rate of 13-week United States Treasury bills established at the first auction held during the month of July shall be utilized for determining the appropriate rate for the following January 1 to June 30, inclusive.

(c) For purposes of subdivision (b), in computing the amount of any interest required to be paid by the state, that interest shall be computed as simple interest, not compound interest.

SEC. 53. Section 19521 of the Revenue and Taxation Code, as amended by Section 33 of Chapter 35 of the Statutes of 2002, is amended to read:

19521. (a) The rate established under this section (referred to in other code sections as ''the adjusted annual rate'') shall be determined in accordance with Section 6621 of the Internal Revenue Code, except that:

(1) (A) For taxpayers other than corporations, the overpayment rate specified in Section 6621(a)(1) of the Internal Revenue Code shall be modified to be equal to the underpayment rate determined under Section 6621(a)(2) of the Internal Revenue Code.

(B) In the case of any corporation, for purposes of determining interest on overpayments for periods beginning before July 1, 2002, the overpayment rate specified in Section 6621(a)(1) of the Internal Revenue Code shall be modified to be equal to the underpayment rate determined under Section 6621(a)(2) of the Internal Revenue Code.

(C) In the case of any corporation, for purposes of determining interest on overpayments for periods beginning on or after July 1, 2002, the overpayment rate specified in Section 6621(a)(1) of the Internal Revenue Code shall be modified to be the lesser of 5 percent or the bond equivalent rate of 13-week United States Treasury bills, determined as follows:

(i) The bond equivalent rate of 13-week United States Treasury bills established at the first auction held during the month of January shall be utilized in determining the appropriate rate for the following July 1 to December 31, inclusive.

(ii) The bond equivalent rate of 13-week United States Treasury bills established at the first auction held during the month of July shall be utilized in determining the appropriate rate for the following January 1 to June 30, inclusive.

(2) The determination specified in Section 6621(b) of the Internal Revenue Code shall be modified to be determined semiannually as follows:

(A) The rate for January shall apply during the following July through December, and

(B) The rate for July shall apply during the following January through June.

(b) (1) For purposes of this part, Part 10 (commencing with Section 17001), Part 11 (commencing with Section 23001), and any other provision of law referencing this method of computation, in computing the amount of any interest required to be paid by the state or by the taxpayer, or any other amount determined by reference to that amount of interest, that interest and that amount shall be compounded daily.

(2) Paragraph (1) shall not apply for purposes of computing the amount of any addition to tax under Section 19136 or 19142.

(c) Section 6621(c) of the Internal Revenue Code, relating to increase in underpayment rate for large corporate underpayments, is modified as follows:

(1) The applicable date shall be the 30th day after the earlier of either of the following:

(A) The date on which the proposed deficiency assessment is issued.

(B) The date on which the notice and demand is sent.

(2) This subdivision shall apply for purposes of determining interest for periods after December 31, 1991.

(3) Section 6621(c)(2)(B)(iii) of the Internal Revenue Code shall apply for purposes of determining interest for periods after December 31, 1998.

(d) Section 6621(d) of the Internal Revenue Code, relating to the elimination of interest on overlapping periods of tax overpayments and underpayments, shall not apply.

SEC. 54. Section 30018 is added to the Revenue and Taxation Code, to read:

30018. (a) ''Stamps and meter impressions'' means the indicia of payment of tax, as required by Section 30161, and include, but are not limited to, stamps, meter impressions, or any other indicia developed using current technology.

(b) The board shall prescribe and approve the types of stamps and meter impressions, and the methods of applying stamps and meter impressions to packages of cigarettes.

SEC. 55. Section 40016 of the Revenue and Taxation Code is amended to read:

40016. (a) A surcharge is imposed on the consumption in this state of electrical energy purchased from an electric utility on and after

January 1, 2003, at the rate of three-tenths mill ($0.0003) per kilowatt-hour, or at the rate determined pursuant to subdivision (b).

(b) The Energy Commission shall fix the rate at a public meeting in each November for each calendar year starting the following January. Under no circumstances may the rate fixed exceed three-tenths mill ($0.0003) per kilowatt-hour. If the commission fails to fix the rate in any November, the surcharge shall continue at the rate in effect during that November.

SEC. 56. Section 13260 of the Water Code is amended to read:

13260. (a) All of the following persons shall file with the appropriate regional board a report of the discharge, containing the information which may be required by the regional board:

(1) Any person discharging waste, or proposing to discharge waste, within any region that could affect the quality of the waters of the state, other than into a community sewer system.

(2) Any person who is a citizen, domiciliary, or political agency or entity of this state discharging waste, or proposing to discharge waste, outside the boundaries of the state in a manner that could affect the quality of the waters of the state within any region.

(3) Any person operating, or proposing to construct, an injection well.

(b) No report of waste discharge need be filed pursuant to subdivision (a) if the requirement is waived pursuant to Section 13269.

(c) Every person subject to subdivision (a) shall file with the appropriate regional board a report of waste discharge relative to any material change or proposed change in the character, location, or volume of the discharge.

(d) (1) Each person for whom waste discharge requirements have been prescribed pursuant to Section 13263 shall submit an annual fee not to exceed twenty thousand dollars ($20,000), according to a reasonable fee schedule established by the state board. Fees shall be calculated on the basis of total flow, volume, number of animals, threat to water quality, or area involved.

(2) (A) Subject to subparagraph (B), any fees collected pursuant to this section shall be deposited in the Waste Discharge Permit Fund which is hereby created. The money in the fund is available for expenditure by the state board, upon appropriation by the Legislature, for the purposes of carrying out this division.

(B) (i) Notwithstanding subparagraph (A), the fees collected pursuant to this section from stormwater dischargers that are subject to a general industrial or construction stormwater permit under the national pollutant discharge elimination system (NPDES) shall be separately accounted for in the Waste Discharge Permit Fund.

(ii) Not less than 50 percent of the money in the Waste Discharge Permit Fund that is separately accounted for pursuant to clause (i) is available, upon appropriation by the Legislature, for expenditure by the regional board with jurisdiction over the permitted industry or construction site that generated the fee to carry out stormwater programs in the region.

(iii) Each regional board that receives money pursuant to clause (ii) shall spend not less than 50 percent of that money solely on stormwater inspection and regulatory compliance issues associated with industrial and construction stormwater programs.

(3) Any person who would be required to pay the annual fee prescribed by paragraph (1) for waste discharge requirements applicable to discharges of solid waste, as defined in Section 40191 of the Public Resources Code, at a waste management unit that is also regulated under Division 30 (commencing with Section 40000) of the Public Resources Code, and who is or will be subject to the fee imposed pursuant to Section 46801 of the Public Resources Code in the same fiscal year, shall be entitled to a waiver of the annual fee for the discharge of solid waste at the waste management unit imposed by paragraph (1) upon verification by the state board of payment of the fee imposed by Section 48000 of the Public Resources Code, and provided that the fee established pursuant to Section 48000 of the Public Resources Code generates revenues sufficient to fund the programs specified in Section 48004 of the Public Resources Code and the amount appropriated by the Legislature for those purposes is not reduced.

(4) The maximum fee amount set forth in paragraph (1) of subdivision (d) shall be adjusted annually to reflect increases or decreases in the cost of living as measured by the Consumer Price Index prepared by the Department of Industrial Relations or a successor agency.

(e) Each report of waste discharge for a new discharge submitted under this section shall be accompanied by a fee equal in amount to the annual fee for the discharge. If waste discharge requirements are issued, the fee shall serve as the first annual fee. If waste discharge requirements are waived pursuant to Section 13269, all or part of the fee shall be refunded.

(f) (1) The state board shall adopt, by emergency regulations, a schedule of fees authorized under subdivisions (d) and (j). The total revenue collected each year through annual fees shall be set at an amount equal to the revenue levels set forth in the Budget Act for this activity. The state board shall automatically adjust the annual fees each fiscal year to conform with the revenue levels set forth in the Budget Act for this activity. If the state board determines that the revenue collected during the preceding year was greater than, or less than, the revenue levels set

forth in the Budget Act, the state board may further adjust the annual fees to compensate for the over and under collection of revenue.

(2) The emergency regulations adopted pursuant to this subdivision, any amendment thereto, or subsequent adjustments to the annual fees, shall be adopted by the state board in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. The adoption of these regulations is an emergency and shall be considered by the Office of Administrative Law as necessary for the immediate preservation of the public peace, health, 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, any emergency regulations adopted by the state board, or adjustments to the annual fees made by the state board pursuant to this section, shall not be subject to review by the Office of Administrative Law and shall remain in effect until revised by the state board.

(g) The state board shall adopt regulations setting forth reasonable time limits within which the regional board shall determine the adequacy of a report of waste discharge submitted under this section.

(h) Each report submitted under this section shall be sworn to, or submitted under penalty of perjury.

(i) The regulations adopted by the state board pursuant to subdivision (f) shall include a provision that annual fees shall not be imposed on those who pay fees under the National Pollutant Discharge Elimination System until the time when those fees are again due, at which time the fees shall become due on an annual basis.

(j) Facilities for confined animal feeding or holding operations, including dairy farms, which have been issued waste discharge requirements or exempted from waste discharge requirements prior to January 1, 1989, are exempt from subdivision (d). If the facility is required to file a report under subdivision (c) after January 1, 1989, the report shall be accompanied by a filing fee, to be established by the state board in accordance with subdivision (f), not to exceed two thousand dollars ($2,000), and the facility shall be exempt from any annual fee.

(k) Any person operating or proposing to construct an oil, gas, or geothermal injection well subject to paragraph (3) of subdivision (a), shall not be required to pay a fee pursuant to subdivision (d), if the injection well is regulated by the Division of Oil and Gas of the Department of Conservation, in lieu of the appropriate California regional water quality control board, pursuant to the memorandum of understanding, entered into between the state board and the Department of Conservation on May 19, 1988. This subdivision shall remain operative until the memorandum of understanding is revoked by the state board or the Department of Conservation.

(*l*) In addition to the report required by subdivision (a), before any person discharges mining waste, the person shall first submit the following to the regional board:

(1) A report on the physical and chemical characteristics of the waste that could affect its potential to cause pollution or contamination. The report shall include the results of all tests required by regulations adopted by the board, any test adopted by the Department of Toxic Substances Control pursuant to Section 25141 of the Health and Safety Code for extractable, persistent, and bioaccumulative toxic substances in a waste or other material, and any other tests that the state board or regional board may require, including, but not limited to, tests needed to determine the acid-generating potential of the mining waste or the extent to which hazardous substances may persist in the waste after disposal.

(2) A report that evaluates the potential of the discharge of the mining waste to produce, over the long term, acid mine drainage, the discharge or leaching of heavy metals, or the release of other hazardous substances.

(m) Except upon the written request of the regional board, a report of waste discharge need not be filed pursuant to subdivision (a) or (c) by a user of recycled water that is being supplied by a supplier or distributor of recycled water for whom a master recycling permit has been issued pursuant to Section 13523.1.

SEC. 57. Section 3053 of the Welfare and Institutions Code is amended to read:

3053. (a) If at any time following receipt at the facility of a person committed pursuant to this article, the Director of Corrections concludes that the person, because of excessive criminality or for other relevant reason, including the person's eligibility for treatment pursuant to Section 1210.1 of the Penal Code, is not a fit subject for confinement or treatment in the narcotic detention, treatment, and rehabilitation facility, he or she shall return the person to the court in which the case originated for further proceedings on the criminal charges that the court may deem warranted.

(b) A person committed pursuant to this article who is subsequently committed to the Director of Corrections pursuant to Section 1168 or 1170 of the Penal Code shall not be a fit subject for treatment pursuant to this article. The court committing the person to the Director of Corrections pursuant to Section 1168 or 1170 of the Penal Code shall immediately notify the court that originally committed the person pursuant to this article. Upon receipt of the person committed pursuant to Section 1168 or 1170 of the Penal Code or upon notification of such commitment, whichever is sooner, the Director of Corrections shall notify the court that committed the person pursuant to this article of the subsequent commitment. Upon receipt of notification of the subsequent commitment the court that had committed the person pursuant to this

article shall automatically terminate the commitment and shall promptly set for hearing the matter of further proceedings on the criminal charges.

(c) If the defendant was originally committed pursuant to Section 3050 or 3051, the committing court, if the criminal proceedings were conducted in another court, shall notify that court that adjourned its criminal proceedings or suspended sentence in the case pending the civil commitment. In that event, that criminal court shall then promptly set for hearing the matter of the sentencing of the defendant upon the conviction that subsequently resulted in the original civil commitment.

SEC. 58. Section 3055 is added to the Welfare and Institutions Code, to read:

3055. The Director of Corrections is authorized to establish a limit on the number of persons that may be committed to the narcotic detention, treatment, and rehabilitation facility pursuant to this chapter. In order to achieve this limit, the director may refer a person back to the court in which the case originated for such further proceedings as that court may deem necessary.

SEC. 59. (a) If a case management system is funded in Item 8350-001-0001 of the Budget Act of 2002, that system shall be made accessible as follows:

(1) The Department of Industrial Relations shall procure a Case Management System that has the capability to ultimately provide the public with free, web-based access to a searchable database containing all of the following information:

(A) The status of all complaints, citations, and administrative proceedings.

(B) The name of the investigator and attorney assigned to a matter, when applicable.

(C) The final disposition of all complaints, citations, and administrative proceedings.

(2) The department shall take appropriate steps to ensure compliance with all applicable legal requirements regarding the privacy rights of employees and witnesses.

(b) It is the intent of the Legislature that when the database is operational, it will provide the public with information similar to the information provided by the federal courts through their PACER system, https://pacer.uspci.uscourts.gov/index.html, and offered by the Establishment Search of the Occupational Safety and Health Administration at http://155.103.6.10/cgi-bin/est/est1.

SEC. 60. (a) The Legislature finds and declares all of the following:

(1) The juvenile arrest rate in California has declined dramatically over the last several years. From 1995 to 2000, inclusive, the felony arrest rate for juveniles dropped over 34 percent; from 1980 to 2000, inclusive, the felony juvenile arrest rate declined 50 percent. During the

same 20-year period, the total juvenile arrest rate dropped over 38 percent.

(2) County probation departments now supervise approximately 97 percent of all juvenile offenders; the remaining 3 percent are committed to the Department of the Youth Authority.

(3) Commitments to the Department of the Youth Authority have dropped by almost 40 percent since 1995 to 1996, inclusive.

(4) Despite the significant decline in the number of persons committed to the Youth Authority, the Department of the Youth Authority continues to operate the same number of institutions and camps as it did when its population peaked at over 10,000 wards. The department similarly continues to expend an annual budget exceeding four hundred million dollars ($400,000,000).

(5) As a result of the Department of the Youth Authority's drop in population and continued operation of all of its facilities, the cost-per-ward at the Youth Authority is about fifty thousand dollars ($50,000) per year.

(6) In these fiscally challenging times, prudent public policy dictates that the Department of Youth Authority consolidate its facilities and programs to reflect its reduced population.

(7) It is the intent of the Legislature that the Department of the Youth Authority produce a viable plan for closing three of its facilities in a manner that achieves fiscal savings for the state and assures public safety through sound correctional programming consistent with the requirements of Chapter 1 (commencing with Section 1700) of Division 2.5 of the Welfare and Institutions Code.

(b) (1) The Department of the Youth Authority shall submit to the Department of Finance and the fiscal committees of the Legislature on or before November 1, 2002, a written plan to close at least three facilities by June 30, 2007.

(2) The Department of the Youth Authority shall close at least one facility pursuant to the plan required by this subdivision not later than June 30, 2004.

(c) The plan submitted pursuant to subdivision (b) shall include, but not be limited to, the following information regarding the proposed closure or closures:

(1) Identification of the facilities proposed for closure.

(2) The basis for selecting the facilities for closure.

(3) The basis for not selecting the facilities that are not proposed for closure.

(4) A description of the land and buildings that would be affected by the proposed closures.

(5) Potential alternative uses for the land and buildings that would be affected by the proposed closures, including, but not limited to, sale or lease of the property.

(6) A description of existing lease arrangements, if any, regarding the facilities proposed for closure.

(7) Projected savings to the department from the proposed closures.

(8) Projected costs to the department for implementing the plan.

(9) A proposed timetable for implementing the plan.

(10) The number and classification of positions affected by the proposed closures, including proposed reassignment plans for current staff located at the facilities proposed to be closed, and anticipated attrition of affected staff through retirement, resignation or other reasons.

(11) A description of treatment programs that will be required to be moved to or expanded at other facilities as a result of the proposed closures.

(12) A proposed relocation plan for wards who will have to be moved as a result of the proposed closures.

(13) A description of any changes that will have to be made at any facilities not proposed for closure as a result of the proposed closures.

(14) A description of any systemwide improvements recommended by the department as essential to effect a smooth and orderly reduction of the total number of facilities.

(15) Any additional information deemed relevant by the department.

(d) The department shall consult with the Department of General Services in preparing the written plan required by this section, and shall be available to confer with the Legislature during the preparation of the plan concerning its status and any issues of concern.

SEC. 61. Money in the Renewable Resource Trust Fund may be expended as a loan to repay the startup loans provided by the General Fund to the California Consumer Power and Conservation Financing Authority, in an amount not to exceed eight million nine hundred thousand dollars ($8,900,000). The loan shall be repaid with interest calculated at the rate earned by the Pooled Money Investment Account at the time of the transfer and shall be repaid from revenues deposited in the California Consumer Power and Conservation Financing Authority Fund pursuant to Chapter 10 of the Statutes of 2001 (First Extraordinary Session). The authority shall repay at least one million dollars ($1,000,000) of the amount loaned pursuant to this section by June 20, 2003. Any remaining loan amount shall be repaid by June 30, 2004. If any amount loaned pursuant to this section remains outstanding on July 1, 2004, the outstanding loan amount shall be converted to a loan from the Energy Resources Programs Account and the outstanding

balance with accrued interest shall be transferred from the Energy Resources Programs Account to the Renewable Resources Trust Fund.

SEC. 62. 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.

SEC. 63. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to make the necessary statutory changes to implement the Budget Act of 2002, with respect to the funding of programs relating to state and local government, it is necessary that this act go into immediate effect.

CHAPTER 1125

An act to add Section 15364.72 to, to add and repeal Section 15364.73 of, and to repeal Section 15364.725 of, the Government Code, relating to international trade and investment offices.

[Approved by Governor September 30, 2002. Filed with Secretary of State September 30, 2002.]

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

SECTION 1. Section 15364.72 is added to the Government Code, to read:

15364.72. (a) The proponent of any new international trade and investment office shall submit a proposed business plan for the office to the Technology, Trade, and Commerce Agency. Ninety days prior to submitting the proposed business plan, the proponent of an international trade and investment office shall submit a letter of intent to the Technology, Trade, and Commerce Agency. The business plan shall contain all of the following:

(1) The delineated geographical area to be served by the office, to be defined as the ''region'' to be served by the office.

(2) Actual and potential investment and tourism directed to the state from the region.

(3) Actual and potential export markets in the region for goods produced in the state, and type of goods categorized according to sector.

(4) Leading industries in the region.

(5) Existing federal trade offices, and municipal trade offices from California operating in the region that provide investment, tourism, and export promotion activities for the state.

(6) Other states that have trade offices, or that have investment, tourism, or export promotion offices in the region.

(7) A cost-benefit analysis, including return-on-investment projections and assumptions on which the analysis is based.

(8) Target export industry markets.

(9) State objectives, goals, and estimated outcome performance.

(10) A proposed detailed budget, including one-time and ongoing costs, and proposed staffing for the international trade and investment office.

(11) A statistical profile of the proposed location of the international trade and investment office that compares the data with comparable locations as provided by the Technology, Trade, and Commerce Agency. The statistical profile of the location shall include all of the following:

(A) California exports to the region for the previous calendar year.

(B) Whether the region ranks within the first quartile of those nations that consume California exports.

(C) Gross domestic product.

(D) Per capita gross domestic product.

(E) Average inflation for the previous five years.

(F) Unemployment rate for the previous five years.

(G) Current Human Development Index ranking as published by the United Nations Human Development Program.

(H) A list of the industry sectors that the country has in common with California, that supply materials to California companies, or that consume California-made materials for manufacturing.

(b) To the extent that funds are appropriated for these purposes in the Budget Act, or upon appropriation, the agency shall evaluate all proposed business plans that have been submitted to the agency pursuant to subdivision (a) during the 12-month period ending on July 1 of any given year. No later than January 15 of the following year, the agency shall submit those evaluations to the Legislature. The evaluation reports shall include a breakdown of the agency's costs for completion of the evaluation, which shall not exceed ten thousand dollars ($10,000) per plan evaluated.

(c) To the extent that the agency is not funded to perform the evaluation of the proposed business plans described in subdivision (b), proponents may pay the cost of the evaluation, provided that proponents pay sufficient funds to cover all of the agency's costs. The agency shall

determine the level of funding necessary to cover all of the agency's costs associated with evaluating the proposed business plan.

(d) The agency may issue clarifying instructions that meet the requirements of this section, including specifying the sources of data to be used, citation requirements, and the form of submitting the proposed business plans. Provided that the agency develops instructions, the proponent shall adhere to the instructions provided by the agency.

SEC. 2. Section 15364.725 of the Government Code, as added by Assembly Bill 3000 of the 2001–02 Regular Session, is repealed.

SEC. 3. Section 15364.73 is added to the Government Code, to read:

15364.73. (a) Notwithstanding any other provision of law, no international trade and investment office authorized by law on or after January 1, 2003, shall be established until after January 1, 2005.

(b) This section shall not apply to a trade office authorized pursuant to Section 15364.80, as added by Senate Bill 1657 of the 2001–02 Regular Session of the Legislature.

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

SEC. 4. Section 2 shall become operative only if Assembly Bill 3000 is enacted during the 2001–02 Regular Session and adds Section 15364.725 to the Government Code.

CHAPTER 1126

An act to add Chapter 13 (commencing with Section 20050) to Part 11 of the Education Code, relating to historic preservation, and making an appropriation therefor.

[Approved by Governor September 30, 2002. Filed with Secretary of State September 30, 2002.]

I am signing Assembly Bill 716 because it highlights the importance of the state's historical and cultural resources and because it appropriates funds specified in Proposition 40. In particular, it is important to disburse the monies that Proposition 40 allocated for San Francisco, Los Angeles and other specific areas in a timely manner that meets the local recreation needs of these communities and the expectations of the voters.

However, with respect to the $128 million earmarked for the California Cultural and Historical Endowment that this bill seeks to create, I regret that I must delete the monies for this purpose. There are several reasons for this action. First, given the state's fiscal condition, now is not the time to establish a new, permanent bureaucratic entity with broad new duties. Second, the duties of the Endowment as proposed in this measure extend well beyond competitive grant-making responsibilities and would create significant general fund cost pressure. For example, while the comprehensive study the bill would require by

January 1, 2005 may be desirable, such a multi-million dollar study could not be funded with bond money.

Moreover, the proposed endowment appears to be significantly redundant and unnecessary given the duties and expertise of the Department of Parks and Recreation, the Office of Historic Preservation (OHP) and the State Historic Resources Commission. In particular, by directing the Endowment to conduct competitive grantmaking for historical preservation purposes, the bill undermines the successful efforts of the OHP and the Commission in disbursing Proposition 12 historical preservation monies. Failure to take advantage of such expertise will lead to unnecessary costs and delays in implementation of competitive grants. For this reason, I am directing the Secretary for Resources to seek $10 million in the budget to fund an initial competitive grants program to be administered by the Office of Historic Preservation that will build upon the success of its current program.

Additionally, while I applaud the authors for their admirable efforts to craft a high-profile structure for enhancement of historical and cultural resources, I am concerned that the timing of the conference committee and the conference report language did not allow for meaningful discussion among stakeholders. Such stakeholder input is key to ensuring that an effective, efficient and respected process for disbursing Proposition 40 monies is crafted. For this reason, I am directing the Secretary for Resources to conduct a series of stakeholder meetings during the legislative recess for the purpose of discussing the best approaches for funding historical, cultural and museum projects.

Finally, there are many significant, high-priority state and local cultural and historical projects that should be funded. These include the Department of Parks and Recreation's projects as included in the May Revise-the Statewide Indian Museum, California Heritage Center, the John Marsh home and the Adamson House collection, as well as local assistance funding for the California Academy of Sciences in San Francisco. For this reason, I am directing the Department of Parks and Recreation to utilize $5 million in Proposition 40 monies for the development of the Statewide Indian Museum. Moreover, the other projects should be directly funded from the cultural and historical monies and I am directing the Department of Finance to include these important projects in my 2003–04 budget.

GRAY DAVIS, Governor

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

SECTION 1. Chapter 13 (commencing with Section 20050) is added to Part 11 of the Education Code, to read:

CHAPTER 13. CALIFORNIA CULTURAL AND HISTORICAL ENDOWMENT ACT

Article 1. General Provisions

20050. This chapter shall be known and may be cited as the California Cultural and Historical Endowment Act.

20051. The Legislature finds and declares the following:

(a) Every civilization defines itself in part by its past, and an understanding of its past helps determine its basic values and future aspirations. Understanding of the past is strengthened and deepened through contact with the buildings, physical places, and artifacts of

earlier times. Through learning this past, our young and future generations come to better understand the society in which they live and to better understand themselves.

(b) As America's physical culture and built environment become remarkably similar throughout the country, it is left to the natural environment and the structures of the past to give a unique sense of place to our communities. Preserving these structures is becoming increasingly compelling as the homogeneity of our physical culture increases.

(c) The buildings, other structures, and artifacts that embody California's past are in escalating danger of being redeveloped, remodeled, renovated, paved, excavated, bulldozed, modernized, and lost forever.

(d) For history to be part of our lives, we must include it in our daily lives, through the adaptive reuse of historic structures in our older commercial districts and inner cities.

(e) California has one of the most diverse populations on earth and its cultural and historic preservation program should reflect that fact. Early cultural and historic preservation efforts often focused on the structures and activities of our European ancestors. Without minimizing their contribution, it is important to pursue other historical threads that are important to California's Latino population, to African-Americans, to Asians and Pacific Islanders, to Native Americans, to Jewish persons, and to many other groups of peoples with uniquely identifiable cultures and histories. It is increasingly important to preserve the physical and cultural history and folklife of these many groups' presence and contributions to California's history.

(f) Historic preservation should include the contributions of all Californians. The study of history once focused largely on the actions and works of wealthy, powerful, noble, brilliant, or famous persons. More recently, historians have tried to increase understanding of how more ordinary people lived and thought. California's historic preservation efforts should allow its citizens and visitors to experience something of the physical world of both.

(g) In 1997, California's Statewide Historic Preservation Plan was prepared pursuant to the National Historic Preservation Act of 1966 and includes seven statewide goals, including the goal to promote the preservation and stewardship of cultural resources among a diversified state population representing all levels of the socioeconomic spectrum.

(h) California's retained past certainly includes sites important to its prehistoric and later Native American people, and the remaining great structures of the 19th century. But the state also needs to consciously preserve selected remnants of the 1930s, of California's great role in World War II, as well as representative structures and sites that were

culturally or economically important during the 1950s, 1960s, and, in some cases, even more recently.

(i) California's historic missions are among California's most evocative historical structures. Their continued protection and restoration should continue to have high priority.

(j) California's museums are among the most important and cherished repositories of the state's cultural and historical heritage.

(k) California's partnerships with federal, state, and local governmental agencies and nonprofit organizations have helped us understand the range and diversity of California's history and historic and cultural resources and artifacts and have helped develop a better understanding of the educational, environmental, and economic benefits of, and tools available for, the preservation and interpretation of historic and cultural resources and artifacts.

20052. As used in this chapter, the following terms have the following meanings:

(a) ''Development'' includes, but is not limited to, improvement, rehabilitation, restoration, enhancement, preservation, protection, and interpretation.

(b) ''Endowment'' means the California Cultural and Historical Endowment created pursuant to Section 20053, or the board of the endowment, as appropriate.

(c) ''Museum'' means a public or private nonprofit institution that is organized on a permanent basis for essentially educational or aesthetic purposes and that owns or uses tangible objects, cares for those objects, and exhibits them to the general public on a regular basis.

(d) ''Nonprofit organization'' means any nonprofit public benefit corporation that is formed pursuant to the Nonprofit Corporation Law (commencing with Section 500 of the Corporations Code), qualified to do business in California, and qualified under Section 501(c)(3) of the Internal Revenue Code, that has, among its principal charitable purposes, the preservation of historic or cultural resources for cultural, scientific, historic, educational, recreational, agricultural, or scenic opportunities.

(e) ''Preservation'' includes, but is not limited to, identification, evaluation, recordation, restoration, stabilization, development, and reconstruction, or any combination of those activities.

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

20052.5. It is the intent of the Legislature that consideration be given to the transferring and fully integrating the Office of Historic Preservation with the California Cultural and Historical Endowment, which is created pursuant to this chapter, for the following purposes:

(a) To increase the stature, visibility, authority, and entrepreneurial capabilities of the Office of Historic Preservation in the interest of helping it carry out its missions and purposes.

(b) To allow the California Cultural and Historical Endowment to benefit from the Office of Historic Preservation's experience and expertise, and from the experience and expertise of its constituents and supporters.

(c) To synergistically increase the state's effective commitment to historic and cultural preservation.

Article 2. Creation and Powers of the Endowment

20053. (a) There is in the California State Library the California Cultural and Historical Endowment, consisting of the following 10 members:

(1) The State Librarian, who shall serve as chair of the endowment, or his or her designee.

(2) The Secretary of the Resources Agency, or his or her designee.

(3) The Director of Finance, or his or her designee.

(4) Three members appointed by the Governor.

(5) Two members appointed by the Senate Committee on Rules.

(6) Two members appointed by the Speaker of the Assembly.

(b) Two Members of the Senate, appointed by the Senate Committee on Rules, and two Members of the Assembly, appointed by the Speaker of the Assembly, shall meet with the endowment and participate in its activities to the extent that such participation is not incompatible with their respective positions as Members of the Legislature.

20054. (a) Appointments to the endowment made pursuant to paragraphs (4), (5), and (6) of subdivision (a) of Section 20053 shall be persons with distinguished achievements in the fields of California history and culture, including, but not limited to, persons with distinguished achievements in the field of California history, historic preservation, architectural history, historical museum design and operation, California artistic history, prehistory, archaeology, or in the cultural achievements of the diverse ethnic and other groups comprising California's population, including the native peoples of California.

(b) Appointments to the endowment made pursuant to paragraphs (4), (5), and (6) of subdivision (a) of Section 20053 shall be representative of the diverse ethnic and other groups comprising California's population, and shall be geographically balanced.

(c) The members appointed pursuant to paragraphs (4), (5), and (6) of subdivision (a) of Section 20053 shall serve at the pleasure of his or her appointing authority. Members appointed under these paragraphs of subdivision (a) of Section 20053 shall be compensated for attendance at

regular meetings of the endowment at the rate of one hundred dollars ($100) per day, and shall be reimbursed for the actual and necessary expenses, including travel expenses, incurred in the performance of their duties.

20056. If any member of the endowment is an employee, director, or officer of any organization that has applied to the endowment for a grant, that member shall not communicate with any other member of the endowment or any member of any advisory panel regarding the grant application and the member shall not be present when the application is considered by the endowment or advisory panel.

20057. (a) A majority of the total authorized membership of the endowment shall constitute a quorum for the transaction of any business under this chapter.

(b) The endowment may adopt regulations as necessary or convenient for carrying out the purposes of this chapter, including, but not limited to, establishing grant application criteria and procedures. Before adopting regulations for grant application criteria and procedures, the endowment shall conduct public hearings throughout the state and shall invite persons from diverse groups and ethnic backgrounds to share their input on the matter.

(c) The endowment may hold hearings, execute agreements, and perform any acts necessary and proper to carry out the purposes of this chapter. The endowment may select and contract with other state agencies and with private entities, including nonprofit organizations, museums and individuals to provide services necessary to carry out the purposes of this chapter.

20058. The endowment shall determine the qualifications of, and it shall appoint and fix the salary of, the executive officer of the endowment, who shall be exempt from civil service, and shall appoint such other staff as may be necessary to carry out the powers and functions set forth in this chapter.

20059. The endowment may appoint one or more advisory committees as it determines to be useful to its work. Members of advisory committees shall serve without compensation, but each may be reimbursed for necessary travel and other expenses incurred in the performance of official duties.

20060. The endowment may apply for and accept federal grants. Notwithstanding Section 11005 of the Government Code, the endowment may receive gifts, donations, subventions, rents, royalties, and other financial support from public and private sources without additional approvals. Funds received pursuant to this section, except for federal grants, shall be deposited in the California Cultural and Historical Endowment Fund, which is hereby created, and, notwithstanding Section 13340 of the Government Code, are

continuously appropriated to the endowment for its lawful purposes, after notification to and approval by the Department of Finance. The endowment shall report annually to the Legislature on the condition and status of the fund, and the uses made of moneys in the fund during the year.

Article 3. Grants and Loans

20070. (a) The endowment may award grants and loans on a competitive basis to public agencies and nonprofit organizations, including museums, to encourage development of a systematic and coordinated assemblage of buildings, sites, artifacts, museums, cultural landscapes, illustrations, written materials, and displays and interpretive centers to preserve and tell the stories of California as a unified society and of the many groups of people that together comprise historic and modern California. In addition to preserving and interpreting California's missions, gold rush and pioneer sites, and other examples of early European exploration and settlement, the endowment shall give priority to funding projects to preserve, interpret, and enhance understanding and appreciation of the state's subsequent cultural, social, and economic evolution. For example, it may fund projects involving buildings, including the acquisition of any interest in real property, structures, ships, historic cemeteries, site areas, places, trails, artifacts, artistic expressions, illustrations, written materials, or collections of artifacts, historic districts, cultural landscapes, illustrations, and written materials, including, but not limited to, the following:

(1) Projects that preserve, display, demonstrate, or interpret the contributions of the many unique identifiable ethnic and other communities that have added significant elements to California's culture, including, but not limited to, their architecture, landscaping, urban forms, recreation, food and drink, styles, literature, artistic expressions, and pastimes.

(2) Projects that preserve and demonstrate culturally significant aspects of the changing ways that ordinary or particularly creative people lived their daily lives during the course of California history, including, but not limited to, representative or exceptionally expressive residences, recreational facilities and equipment, farms and ranches, transportation technologies, and innovative shopping arrangements.

(3) Projects that preserve, display, demonstrate, or interpret the industries, technologies, individuals, groups, and commercial enterprises that built California's enormous economic strength, including, but not limited to, aircraft construction, banking and finance, electronics and related technologies, medical technologies, petroleum

production and refining, movie and television production, and agriculture.

(4) Projects that preserve, display, demonstrate, or interpret California's contribution to the national defense during the state's history, including facilities and artifacts from closed military bases, and including projects about the social, demographic, and other changes that resulted from these national defense activities.

(5) Projects that preserve and promote understanding and continuity of California's living cultural heritage and folklife that is deeply rooted in and reflective of its distinct cultural communities, including, but not limited to, public programs, recordings, exhibitions, apprenticeships, publications, ethnographic documentation, and archival preservation.

(6) Projects that preserve, display, demonstrate, or interpret California's geologic and oceanographic history, including, but not limited to, its assemblage from Jurassic and earlier archipelagoes and ophiolitic remnants through subduction processes, and the expression of global tectonic forces in its mountains, basins, and faults.

(b) The endowment shall fund projects relating to the archaeology, history, or culture of California's Native American population that are sensitive to the sovereign status of the tribes and that respect the cultural and spiritual traditions of those tribes.

(c) The endowment shall give priority to funding projects that preserve, document, interpret, or enhance understanding of threads of California's story that are absent or underrepresented in existing historical parks, monuments, museums, and other facilities, and to achieve careful balance geographically, among communities and organizations of large and small size, and among diverse ethnic groups. The endowment may create financial and other incentives to support projects described in this subdivision, including, but not limited to, technical assistance, funding set asides, and preferential match requirements.

(d) The endowment shall ensure that California's historic and cultural resources are accessible and available to the people of California, especially traditionally underserved communities, by encouraging programs including, but not limited to, traveling exhibitions, illustrative publications, exchanges, Web sites and digitalization of materials, and programs in conjunction with school districts to bring school children into contact with these materials, and may fund projects for these purposes.

20071. The endowment shall require that public agencies requesting a grant provide a matching amount of resources for the completion of the project. The match may include resources obtained from other funding agencies, and may include in-kind resources. The match shall be a proportion of the cost of the project as the endowment determines is

appropriate, but the proportion shall be uniform for categories of project and public agencies, except pursuant to subdivision (c). The endowment shall determine the match proportion by considering the following:

(a) The endowment shall seek to leverage the resources available to it.

(b) The endowment shall require a match sufficient to ensure a strong commitment to the project on the part of the sponsoring agency.

(c) The endowment may require a lower than usual match if necessary to make projects realistic for underserved communities.

20072. (a) The endowment shall require grant recipients to report on the progress and completion of any project for which they have received a grant, and on public acceptance or criticism of the project. The endowment shall make all such reports available to the Legislature.

(b) The endowment shall require grant recipients to follow the Secretary of the Interior's Standards for the Treatment of Historic Properties where appropriate to ensure the historical integrity of the project.

20073. (a) Funds may be granted or loaned to a nonprofit organization under this chapter if the nonprofit organization enters into an agreement with the endowment, on such terms and conditions as the endowment specifies.

(b) (1) In the case of a grant for real property acquisition, the agreement shall provide all of the following:

(A) The purchase price of any interest in real property acquired by the nonprofit organization may not exceed the fair market value as established by an appraisal approved by the endowment.

(B) The endowment shall approve the terms under which the interest in land is acquired.

(C) The interest in land acquired pursuant to a grant from the endowment may not be used as security for any debt to be incurred by the nonprofit organization unless the endowment approves the transaction.

(D) The transfer of land acquired pursuant to an endowment grant shall be subject to the approval of the endowment and a new agreement sufficient to protect the interest of the people of California shall be entered into with the transferee.

(E) If any essential term or condition is violated, title to all interest in real property acquired with state funds shall immediately vest in the state.

(F) If the existence of the nonprofit organization is terminated for any reason, title to all interest in real property acquired with state funds shall immediately vest in the state unless another appropriate public agency or nonprofit organization is identified by the endowment and agrees to accept title to all interests in real property.

(2) Any deed or other instrument of conveyance whereby real property is being acquired by a nonprofit organization pursuant to this section shall set forth the reversionary interest of the state.

(c) The endowment shall also require an agreement sufficient to protect the public interest in any improvement or development constructed under a grant to a nonprofit organization for improvement and development of a project under this chapter. The agreement shall particularly describe any real property which is subject to the agreement, and it shall be recorded by the endowment in the county in which the real property is located.

(d) Any funds collected from a nonprofit organization pursuant to an agreement regarding a grant shall be deposited in the account created pursuant to Section 20060.

20074. The endowment may provide technical and other assistance to applicants and prospective applicants as it determines to be useful or necessary to carry out the purposes of this chapter.

Article 4. Cultural and Historical Policy

20080. The endowment shall undertake a comprehensive survey of the state of cultural and historical preservation, accessibility, and interpretation in California, and report to the Governor and the Legislature. In conducting the survey, the endowment shall coordinate with existing state agencies, including the California Arts Council, the Department of Parks and Recreation, and the Secretary of State. The report shall include all of the following:

(a) A survey of elements in California's existing assemblage of buildings, sites, artifacts, museums, cultural landscapes, trails, illustrations, the arts and artistic expressions, written materials, and displays and interpretive centers that are missing or underrepresented, such as if current facilities, materials, and services leave out, misrepresent, or inadequately present some important thread of the story of California as a unified society or of the many groups of people that together comprise historic and modern California.

(b) Recommendations for steps that should be taken to fill in the missing or underrepresented elements identified in subdivision (a).

(c) Recommendations for the manner of transferring the Office of Historic Preservation in the Department of Parks and Recreation to the endowment, consistent with the Legislature's intent expressed in Section 20052.5.

(d) Recommendations for additional steps that should be taken to better preserve and administer cultural and historic resources efficiently and effectively, including additional actions that should be taken to improve the governmental structures responsible for historic and

cultural preservation in California, including oversight and support of museums. In particular, the endowment shall examine the feasibility and desirability of establishing the endowment as a separate institution in state government, without ties to any existing agency or department, although under the general authority of the Governor. The endowment shall also identify the most appropriate chair, or the most appropriate method for selecting the chair, of its board.

(e) A survey of the capacities and fiscal conditions of public, nonprofit, and other private entities in California that provide cultural and historical facilities and services, including museums.

(f) Recommendations for the future financing of cultural and historical programs provided by public agencies and nonprofit agencies in California, including museums.

(g) Recommendations for programs to encourage the historic maintenance and restoration of properties in private ownership, including, but not limited to, a state tax credit for restoration of historic properties that maintain historic integrity, property tax deferral as long as a property's historic integrity is maintained, and low interest loans.

(h) A study of the economic impact of the preservation and interpretation of cultural and historic resources in the state. This should include the economic benefits resulting from the preservation of historic commercial and residential properties and sites, and from historic and cultural tourism activities.

20081. In preparing its report pursuant to Section 20080, the endowment shall conduct public hearings throughout the state on this subject and shall invite persons of diverse groups and ethnic backgrounds to share their input on the matter, including comment on the needs of all types of cultural and historical resource organizations and programs in California.

20082. The report prepared pursuant to this article shall be delivered to the Governor and the Legislature by November 1, 2005. The endowment shall report annually to the Governor and the Legislature on its progress towards completion of the report, until the report is completed.

Article 5. Museum and Cultural Resources Program

20090. The Legislature finds and declares the following:

(a) Museums do important work that helps the state meet its obligations to residents in the field of education. Museums contribute to formal and informal learning at every stage of life, from the education of children in preschool to the continuing education of adults.

(b) Museums are a significant resource for in-service training of California teachers. A great potential for a relationship between museums and educational facilities exists.

(c) Museums are an important means of making art, science, history, and culture available to California residents.

(d) Museums provide an economic boost to their communities by attracting tourists and local visitors, all of whom create a demand for services.

(e) Museums often help define the public identity of a community, and serve as a foundation of its cultural identity. A museum has the legacy of its community as the heart of its mission.

20091. To extent that funding is available for such purposes, the endowment shall establish a program to assist and enhance the services of California's museums and of other groups and institutions that undertake cultural projects that are deeply rooted in and reflective of previously underserved communities. This program shall give priority to:

(a) Enhancing opportunities for superior museum and cultural program services.

(b) Encouraging museums and cultural programs to provide services to school pupils, including any of the following:

(1) Curriculum development.

(2) Schoolsite presentations or workshops.

(3) Teacher training.

(4) Reduced price or free admission of pupils to museums.

(c) Collaborative projects and technical assistance to coordinate the work of eligible museums and cultural programs and to enhance the ability of museums and cultural programs to serve the public. Priority shall be given to any project that does any of the following:

(1) Assists an eligible museum or cultural program in serving an historically underserved population.

(2) Aids a museum or cultural program in diversifying or expanding its audience.

(3) Aids a museum or cultural program in raising its professional standards in order to better serve the public.

(d) Projects that increase accessibility to museums' and cultural programs' collections and services.

SEC. 2. Of the funds available for the purposes of Section 5096.52 of the Public Resources Code, the sum of two hundred nineteen million seven hundred sixty-five thousand dollars ($219,765,000) is hereby appropriated from the California Clean Water, Clean Air, Safe Neighborhood Parks, and Coastal Protection Fund, created pursuant to Section 5096.610 of the Public Resources Code, for allocation as follows:

(a) The sum of one hundred twenty-eight million four hundred fifteen thousand dollars ($128,415,000) to the California State Library to be used for the purposes of Chapter 13 (commencing with Section 20050) of Part 11 of the Education Code. It is the intent of the Legislature that similar amounts will be appropriated to the California Cultural and Historical Endowment in future years, subject to legislative approval of the California Cultural and Historical Endowment's performance. It is the intent of the Legislature that all funds allocated pursuant to subdivision (d) of Section 5096.610 of the Public Resources Code will be allocated pursuant to Chapter 13 of Part 11 of the Education Code or this act, subject to the directives of Section 5096.652 of the Public Resources Code. Funds allocated pursuant to this subdivision may be used only for capital expenditures, as defined by the California Cultural and Historical Endowment, and in any case shall be used in a manner consistent with the requirements of Section 16727 of the Government Code. The provisions of Section 16727 of the Government Code shall be interpreted in a manner which supports the historical preservation purposes of Chapter 13 (commencing with Section 20050) of Part 11 of the Education Code, including allowing funding for all work reasonably related to the restoration of buildings and other historical resources to conditions of structural soundness consistent with historical integrity. Of the amount derived from the proceeds of bonds and appropriated under this subdivision, not more than 5 percent may be expended for associated programmatic costs.

(b) The sum of ninety-one million three hundred fifty thousand dollars ($91,350,000) to the Department of Parks and Recreation for allocation as opportunity grants to any public agency or nonprofit organization for the acquisition, development, preservation, or interpretation, or any combination thereof, of buildings, structures, sites, places, or artifacts, or any combination thereof, that preserve and demonstrate culturally significant aspects of California history. Of the amount derived from the proceeds of bonds and appropriated under this subdivision, not more than 5 percent may be expended for associated programmatic costs.

SEC. 3. It is the intent of the Legislature that the number of positions within the State Library not be increased in the 2002–03 fiscal year to carry out the purposes of this act.

SEC. 4. (a) It is the intent of the Legislature to appropriate the funds scheduled in subdivision (b) that are allocated specifically to designated cities, counties, and projects, as specified in the California Clean Water, Clean Air, Safe Neighborhood Parks, and Coastal Protection Act of 2002, which was approved as Proposition 40 by the California electorate on March 5, 2002.

(b) The sum of seventy-four million six hundred eighty thousand dollars ($74,680,000) is hereby appropriated from the California Clean Water, Clean Air, Safe Neighborhood Parks, and Coastal Protection Fund to the Department of Parks and Recreation. These funds shall be allocated by the department for expenditure by the following entities for recreational grants:

(1) Pursuant to subdivision (g) of Section 5096.621 of the Public Resources Code, eleven million six hundred sixty-nine thousand dollars ($11,669,000) to the City of Los Angeles for acquisition and development of local parks. These funds shall be expended by the City of Los Angeles, as follows:

(A) Nine million five hundred thousand dollars ($9,500,000) to fund the construction of universal access playgrounds in council districts that currently do not have one within their boundaries.

(B) One million one hundred sixty-nine thousand dollars ($1,169,000) for urban lakes and environmental enhancement.

(C) One million dollars ($1,000,000) for the completion of design, architectural, engineering, and construction documents for contiguous civic center parks.

(2) Pursuant to subdivision (g) of Section 5096.621 of the Public Resources Code, nine million three hundred thirty-five thousand dollars ($9,335,000) to the County of Los Angeles for acquisition and development of local parks.

(3) Pursuant to Section 5096.625 of the Public Resources Code, nine million three hundred thirty-five thousand dollars ($9,335,000) to the City of Rancho Cucamonga for the Central Park Project.

(4) Pursuant to Section 5096.625 of the Public Resources Code, four million six hundred sixty-seven thousand dollars ($4,667,000) to the City of Los Angeles for the Hansen Dam Recreation Area. These funds shall be distributed by the City of Los Angeles in the following amounts to the following projects:

(A) Two million five hundred forty-seven thousand dollars ($2,547,000) to the Children's Museum of Los Angeles at Hansen Dam.

(B) Five hundred thousand dollars ($500,000) to the Kid's Campground at Hansen Dam.

(C) Two hundred fifty thousand dollars ($250,000) for improvement of existing trails at Hansen Dam or development of new trails at Hansen Dam, or for both of those purposes.

(D) One million one hundred twenty thousand dollars ($1,120,000) for the construction of a new skate park at Hansen Dam.

(E) Two hundred fifty thousand dollars ($250,000) for improvement of a parking lot at Hansen Dam.

(5) Pursuant to Section 5096.625 of the Public Resources Code, four million six hundred sixty-seven thousand dollars ($4,667,000) to the

City of Los Angeles for the Sepulveda Basin Recreational Area. These funds shall be used by the City of Los Angeles for the purpose of constructing the Sepulveda Basin Sports Complex. The complex shall include, among other things, adult softball and youth baseball and softball diamonds and regulation soccer fields. The complex shall be located in the Sepulveda Basin Recreation Area on property south of Victory Boulevard and west of Balboa Boulevard.

(6) Pursuant to subdivision (b) of Section 5096.652 of the Public Resources Code, thirty-two million six hundred seventy-three thousand dollars ($32,673,000) to the City and County of San Francisco for Golden Gate Park.

(7) Pursuant to subdivision (c) of Section 5096.652 of the Public Resources Code, two million three hundred thirty-four thousand dollars ($2,334,000) to the County of Los Angeles for the El Pueblo Cultural and Performing Arts Center.

(c) The funds appropriated by this section shall be available for encumbrance for three years after the date upon which the funds first become available for encumbrance. Disbursements in liquidation of encumbrances shall be made within five years following the last day the appropriation is available for encumbrance.

(d) Eligible projects funded under this section with the proceeds from the sale of any bonds shall be consistent with the requirements of Section 16727 of the Government Code.

CHAPTER 1127

An act to amend Sections 12152, 13400, 13401, 13402, 13403, 13405, 13406, 63048.5, and 63052 of, and to add Article 6.3 (commencing with Section 8592.9) to Chapter 7 of Division 1 of Title 2 of, and to add Article 5.5 (commencing with Section 63047.5) to Chapter 2 of Division 1 of Title 6.7 of, the Government Code, to amend Sections 33020, 33681, and 33681.5 of, and to add Sections 33681.7 and 33681.8 to, the Health and Safety Code, to add Chapter 2.7 (commencing with Section 22047) to Part 3 of Division 2 of the Public Contract Code, to amend Section 19521 of the Revenue and Taxation Code, to amend Section 143 of the Streets and Highways Code, and to amend and supplement the Budget Act of 2002, relating to state and local government, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 30, 2002. Filed with Secretary of State September 30, 2002.]

I have signed Assembly Bill 1768, but I am deleting the provision for funding up to $15,000,000 for the Governor's Security Advisor upon receipt of funding from federal allocations for Homeland Security. Given the uncertainty of the availability of federal funds, it is premature to require that the expenditure be limited to equipment standards placed in statute given that the existing Public Safety Radio Strategic Planning Committee is developing a statewide solution for radio interoperability systems for all first responders. Their standards will assure that California's emergency first responders will have equipment that complies with the statewide interoperability radio standards and that this equipment, subject to federal funding, will provide badly needed equipment for all of the State's emergency personnel in the improvement of public safety.

Use of these funds should be consistent with established communication plans and systems authorized under the California Emergency Services Act including the California Emergency Plan, the California State Mutual Aid Radio System Plan, and other state and local plans providing for multi-discipline radio interoperability. This bill would unnecessarily specify a technology standard that could be overly restrictive. It is my preference that instead of being restrictive, the State in its procurements should maximize the use of business competition, thereby ensuring reasonable cost to the State and acquisition of proven, established, stable technology and equipment.

GRAY DAVIS, Governor

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

SECTION 1. Article 6.3 (commencing with Section 8592.9) is added to Chapter 7 of Division 1 of Title 2 of the Government Code, to read:

Article 6.3. Public Safety Communications Equipment

8592.9. (a) Of the funds received from the federal government for homeland security and appropriated in the Budget Act of 2002, not more than fifteen million dollars ($15,000,000) may be allocated to the security adviser to the Governor for disbursement to state and local government public safety agencies to procure and operate radio equipment that will provide interoperability among state, local, and federal public radio systems. This interoperable radio equipment shall meet the public safety digital communications standards in Suite 102 of the American National Standards Institute and the Telecommunications Information Association.

(b) Each state and local government public safety agency that receives funds pursuant to this section shall report to the Legislature on its progress in implementing this section by January 1 of each year, beginning in 2004, and until all of the funds disbursed pursuant to this section have been expended.

(c) This section shall not be construed to preempt or supercede the development and implementation of public radio communications systems by local governments.

SEC. 2. Section 12152 of the Government Code is amended to read:

12152. (a) To assist him or her in the discharge of the duties of his or her office, the Secretary of State may appoint one Assistant Secretary of State, whose powers, duties and liabilities shall be those of a deputy, and any deputies and clerical, expert, technical and other assistants necessary for the proper conduct of his or her office. The Assistant Secretary of State and all deputies are civil executive officers.

(b) Notwithstanding any other provision of law, but consistent with Section 4 of Article VII of the California Constitution and with subdivision (a) of this section, two employees of the Secretary of State's office shall be appointed by the Governor and are exempt from state civil service.

SEC. 12. Section 33020 of the Health and Safety Code is amended to read:

33020. ''Redevelopment'' means the planning, development, replanning, redesign, clearance, reconstruction, or rehabilitation, or any combination of these, of all or part of a survey area, and the provision of those residential, commercial, industrial, public, or other structures or spaces as may be appropriate or necessary in the interest of the general welfare, including recreational and other facilities incidental or appurtenant to them and payments to school and community college districts in the fiscal years specified in Sections 33681, 33681.5, and 33681.7.

SEC. 13. Section 33681 of the Health and Safety Code is amended to read:

33681. (a) (1) During the 1992–93 fiscal year, a redevelopment agency shall remit, prior to May 10, 1993, an amount equal to the amount determined for that agency pursuant to subparagraph (D) of paragraph (2) to the county auditor for deposit in the Educational Revenue Augmentation Fund created pursuant to Section 97.03 of the Revenue and Taxation Code.

(2) For the 1992–93 fiscal year, on or before October 1, 1992, the Director of Finance shall do each of the following:

(A) Determine the total amount of property taxes apportioned to each agency pursuant to Section 33670, including any amounts apportioned to affected taxing agencies pursuant to Section 33401 or 33676, in the 1990–91 fiscal year.

(B) Determine the total amount of property taxes apportioned to all agencies pursuant to Section 33670, including any amounts apportioned to affected taxing agencies pursuant to Section 33401 or 33676, in the 1990–91 fiscal year.

(C) Determine a percentage factor by dividing two hundred five million dollars ($205,000,000) by the amount determined pursuant to subparagraph (B).

(D) Determine an amount for each agency by multiplying the amount determined pursuant to subparagraph (A) by the percentage factor determined pursuant to subparagraph (C).

(E) Notify each agency and each legislative body of the amount determined pursuant to subparagraph (D).

(F) Notify each county auditor of the amounts determined pursuant to subparagraph (D) for each agency in his or her county.

(b) (1) Notwithstanding Sections 33334.2, 33334.3, and 33334.6, and any other provision of law, in order to make the full allocation required by this section, an agency may borrow up to 50 percent of the amount required to be allocated to the Low- and Moderate-Income Housing Fund pursuant to Sections 33334.2, 33334.3, and 33334.6 during the 1992–93 fiscal year, unless executed contracts exist that would be impaired if the agency reduced the amount allocated to the Low- and Moderate-Income Housing Fund pursuant to the authority of this section.

(2) As a condition for borrowing pursuant to this subdivision, an agency shall make a finding that there are insufficient other moneys to meet the requirements of subdivision (a). Funds borrowed pursuant to this subdivision shall be repaid in full on or before June 30, 2003, unless the agency is, on or before June 30, 2003, required by law to make a further payment to an Educational Revenue Augmentation Fund in the 2002–03 fiscal year, in which case the date for repayment of the loan borrowed pursuant to this subdivision shall be delayed by one year for each fiscal year, commencing with the 2002–03 fiscal year, that the agency is required to make this further payment.

(c) In order to make the allocation required by this section, an agency may use any funds that are legally available and not legally obligated for other uses, including, but not limited to, reserve funds, proceeds of land sales, proceeds of bonds or other indebtedness, lease revenues, interest, and other earned income. No moneys held in a low- and moderate-income fund as of July 1, 1992, may be used for this purpose.

(d) The legislative body shall, by March 1, 1993, report to the county auditor as to how the agency intends to fund the allocation required by this section.

(e) The allocation obligations imposed by this section, including amounts owed, if any, created under 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 shall constitute an indebtedness of the agency with respect to the redevelopment project until paid in full.

(f) It is the intent of the Legislature, in enacting this section, that these allocations directly or indirectly assist in the financing or refinancing,

in whole or in part, of the community's redevelopment projects pursuant to Section 16 of Article XVI of the California Constitution.

(g) It is the intent of the Legislature in enacting this section that this section supersede and be operative in place of Section 33681 of the Health and Safety Code as added by Senate Bill 617 of the 1991–92 Regular Session.

(h) This section shall be operative only until July 1, 2003. This section shall remain in effect only until January 1, 2004, and as of that date is repealed.

SEC. 14. Section 33681.5 of the Health and Safety Code is amended to read:

33681.5. (a) (1) During each of the 1993–94 and 1994–95 fiscal years, a redevelopment agency shall remit prior to May 10 an amount equal to the amount determined for that agency pursuant to subparagraph (D) of paragraph (2) to the county auditor for deposit in the Educational Revenue Augmentation Fund created pursuant to Section 97.03 of the Revenue and Taxation Code.

(2) For each of the 1993–94 and 1994–95 fiscal years, on or before October 1, the Director of Finance shall do each of the following:

(A) Determine the net tax increment apportioned to each agency pursuant to Section 33670, excluding any amounts apportioned to affected taxing agencies pursuant to Section 33401 or 33676, in the 1990–91 fiscal year.

(B) Determine the net tax increment apportioned to all agencies pursuant to Section 33670, excluding any amounts apportioned to affected taxing agencies pursuant to Section 33401 or 33676, in the 1990–91 fiscal year.

(C) Determine a percentage factor by dividing sixty-five million dollars ($65,000,000) by the amount determined pursuant to subparagraph (B).

(D) Determine an amount for each agency by multiplying the amount determined pursuant to subparagraph (A) by the percentage factor determined pursuant to subparagraph (C).

(E) Notify each agency and each legislative body of the amount determined pursuant to subparagraph (D).

(F) Notify each county auditor of the amounts determined pursuant to subparagraph (D) for each agency in his or her county.

(b) (1) Notwithstanding Sections 33334.2, 33334.3, and 33334.6, and any other provision of law, in order to make the full allocation required by this section, an agency may borrow up to 50 percent of the amount required to be allocated to the Low- and Moderate-Income Housing Fund pursuant to Sections 33334.2, 33334.3, and 33334.6 during the 1993–94 and 1994–95 fiscal years, unless executed contracts exist that would be impaired if the agency reduced the amount allocated

to the Low- and Moderate-Income Housing Fund pursuant to the authority of this section.

(2) As a condition of borrowing pursuant to this subdivision, an agency shall make a finding that there are insufficient other moneys to meet the requirements of subdivision (a). Funds borrowed pursuant to this subdivision shall be repaid in full on or before June 30, 2004, unless the agency is, on or before June 30, 2003, required by law to make a further payment to an Educational Revenue Augmentation Fund in the 2002–03 fiscal year, in which case the date for repayment of the loan borrowed pursuant to this subdivision shall be delayed by one year for each fiscal year, commencing with the 2002–03 fiscal year, that the agency is required to make this further payment.

(c) In order to make the allocation required by this section, an agency may use any funds that are legally available and not legally obligated for other uses, including, but not limited to, reserve funds, proceeds of land sales, proceeds of bonds or other indebtedness, lease revenues, interest, and other earned income. No moneys held in a low- and moderate-income fund as of July 1 of that fiscal year may be used for this purpose.

(d) The legislative body shall by March 1 report to the county auditor as to how the agency intends to fund the allocation required by this section.

(e) The allocation obligations imposed by this section, including amounts owed, if any, created under 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 shall constitute an indebtedness of the agency with respect to the redevelopment project until paid in full.

(f) It is the intent of the Legislature, in enacting this section, that these allocations directly or indirectly assist in the financing or refinancing, in whole or in part, of the community's redevelopment projects pursuant to Section 16 of Article XVI of the California Constitution.

(g) For the purpose of making the determinations required by subdivision (a), the Director of Finance shall use those amounts reported as the ''net tax increment to agency'' for all agencies and for each agency in Table 6 of the 1990–91 fiscal year Controller's Annual Report on Financial Transactions Concerning Community Redevelopment Agencies of California.

(h) In the event that revised reports have been accepted by the Controller on or before January 1, 1994, the Director of Finance shall use appropriate data that has been certified by the Controller for the purpose of making the determinations required by subdivision (a). If this subdivision requires the Director of Finance to revise the determinations for the 1993–94 and 1994–95 fiscal years, the director shall not make

those changes for the 1993–94 fiscal year, but instead shall apply the revised determinations for both fiscal years to the 1994–95 fiscal year.

(i) This section shall be operative only until July 1, 2004. This section shall remain in effect only until January 1, 2005, and as of that date is repealed.

SEC. 15. Section 33681.7 is added to the Health and Safety Code, to read:

33681.7. (a) (1) During the 2002–03 fiscal year, a redevelopment agency shall, prior to May 10, remit an amount equal to the amount determined for that agency pursuant to subparagraph (I) of paragraph (2) to the county auditor for deposit in the county's Educational Revenue Augmentation Fund created pursuant to Article 3 (commencing with Section 97) of Chapter 6 of Part 0.5 of Division 1 of the Revenue and Taxation Code.

(2) For the 2002–03 fiscal year, on or before October 1, the Director of Finance shall do all of the following:

(A) Determine the net tax increment apportioned to each agency pursuant to Section 33670, excluding any amounts apportioned to affected taxing agencies pursuant to Section 33401 or 33676, in the 2000–01 fiscal year.

(B) Determine the net tax increment apportioned to all agencies pursuant to Section 33670, excluding any amounts apportioned to affected taxing agencies pursuant to Section 33401 or 33676, in the 2000–01 fiscal year.

(C) Determine a percentage factor by dividing thirty-seven million five hundred thousand dollars ($37,500,000) by the amount determined pursuant to subparagraph (B).

(D) Determine an amount for each agency by multiplying the amount determined pursuant to subparagraph (A) by the percentage factor determined pursuant to subparagraph (C).

(E) Determine the total amount of property tax revenue apportioned to each agency pursuant to Section 33670, including any amounts apportioned to affected taxing agencies pursuant to Section 33401 or 33676, in the 2000–01 fiscal year.

(F) Determine the total amount of property tax revenue apportioned to all agencies pursuant to Section 33670, including any amounts apportioned to affected taxing agencies pursuant to Section 33401 or 33676, in the 2000–01 fiscal year.

(G) Determine a percentage factor by dividing thirty-seven million five hundred thousand dollars ($37,500,000) by the amount determined pursuant to subparagraph (F).

(H) Determine an amount for each agency by multiplying the amount determined pursuant to subparagraph (E) by the percentage factor determined pursuant to subparagraph (G).

(I) Add the amount determined pursuant to subparagraph (D) to the amount determined pursuant to subparagraph (H).

(J) Notify each agency and each legislative body of the amount determined pursuant to subparagraph (I).

(K) Notify each county auditor of the amounts determined pursuant to subparagraph (I) for each agency in his or her county.

(b) (1) Notwithstanding Sections 33334.2, 33334.3, and 33334.6, and any other provision of law, in order to make the full allocation required by this section, an agency may borrow up to 50 percent of the amount required to be allocated to the Low and Moderate Income Housing Fund pursuant to Sections 33334.2, 33334.3, and 33334.6 during the 2002–03 fiscal year, unless executed contracts exist that would be impaired if the agency reduced the amount allocated to the Low and Moderate Income Housing Fund pursuant to the authority of this subdivision.

(2) As a condition of borrowing pursuant to this subdivision, an agency shall make a finding that there are insufficient other moneys to meet the requirements of subdivision (a). Funds borrowed pursuant to this subdivision shall be repaid in full within 10 years following the date on which moneys were borrowed.

(c) In order to make the allocation required by this section, an agency may use any funds that are legally available and not legally obligated for other uses, including, but not limited to, reserve funds, proceeds of land sales, proceeds of bonds or other indebtedness, lease revenues, interest, and other earned income. No moneys held in a low- and moderate-income fund as of July 1 of that fiscal year may be used for this purpose.

(d) The legislative body shall by March 1 report to the county auditor as to how the agency intends to fund the allocation required by this section.

(e) The allocation obligations imposed by this section, including amounts owed, if any, created under 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 shall constitute an indebtedness of the agency with respect to the redevelopment project until paid in full.

(f) It is the intent of the Legislature, in enacting this section, that these allocations directly or indirectly assist in the financing or refinancing, in whole or in part, of the community's redevelopment projects pursuant to Section 16 of Article XVI of the California Constitution.

(g) In making the determinations required by subdivision (a), the Director of Finance shall use those amounts reported as the ''Tax Increment Retained by Agency'' for all agencies and for each agency in

Table 7 of the 2000–01 fiscal year Controller's State of California Community Redevelopment Agencies Annual Report.

(h) If revised reports have been accepted by the Controller on or before January 1, 2003, the Director of Finance shall use appropriate data that has been certified by the Controller for the purpose of making the determinations required by subdivision (a).

SEC. 16. Section 33681.8 is added to the Health and Safety Code, to read:

33681.8. (a) (1) For the purposes of this section, ''existing indebtedness'' means one or more of the following obligations incurred by a redevelopment agency prior to the effective date of this section, the payment of which is to be made in whole or in part, directly or indirectly, out of taxes allocated to the agency pursuant to Section 33670, and that is required by law or provision of the existing indebtedness to be made during the fiscal year of the relevant allocation required by Section 33681.7:

(A) Bonds, notes, interim certificates, debentures, or other obligations issued by the agency, whether funded, refunded, assumed, or otherwise, pursuant to Article 5 (commencing with Section 33640).

(B) Loans or moneys advanced to the agency, including, but not limited to, loans from federal, state, or local agencies, or a private entity.

(C) A contractual obligation that, if breached, could subject the agency to damages or other liabilities or remedies.

(D) An obligation incurred pursuant to Section 33445.

(E) Indebtedness incurred pursuant to Section 33334.2.

(F) An amount, to be expended for the operation and administration of the agency, that may not exceed 90 percent of the amount spent for those purposes in the 2000–01 fiscal year.

(G) Obligations imposed by law with respect to activities that occurred prior to the effective date of the act that adds this section.

(2) Existing indebtedness incurred prior to the effective date of this section may be refinanced, refunded, or restructured after that date, and shall remain existing indebtedness for the purposes of this section, if the annual debt service during that fiscal year does not increase over the prior fiscal year and the refinancing does not reduce the ability of the agency to make the payment required by subdivision (a) of Section 33681.7.

(3) For the purposes of this section, indebtedness shall be deemed to be incurred prior to the effective date of this section if the agency has entered into a binding contract subject to normal marketing conditions, to deliver the indebtedness, or if the redevelopment agency has received bids for the sale of the indebtedness prior to that date and the indebtedness is issued for value and evidence thereof is delivered to the initial purchaser no later than 30 days after the date of the contract or sale.

(b) During the 2002–03 fiscal year, an agency that has adopted a resolution pursuant to subdivision (c) may, pursuant to subdivision (a) of Section 33681.7, allocate to the auditor less than the amount required by subdivision (a) of Section 33681.7, if the agency finds that either of the following has occurred:

(1) That the difference between the amount allocated to the agency and the amount required by subdivision (a) of Section 33681.7 is necessary to make payments on existing indebtedness that are due or required to be committed, set aside, or reserved by the agency during the applicable fiscal year and that are used by the agency for that purpose, and the agency has no other funds that can be used to pay this existing indebtedness, and no other feasible method to reduce or avoid this indebtedness.

(2) The agency has no other funds to make the allocation required by subdivision (a) of Section 33681.7.

(c) (1) Any agency that, pursuant to subdivision (b), allocates to the auditor less than the amount required by subdivision (a) of Section 33681.7 shall adopt, prior to December 31, 2002, after a noticed public hearing, a resolution that lists all of the following:

(A) Each existing indebtedness incurred prior to the effective date of this section.

(B) Each indebtedness on which a payment is required to be made during the 2002–03 fiscal year.

(C) The amount of each payment, the time when it is required to be paid, and the total of the payments required to be made during the 2002–03 fiscal year. For indebtedness that bears interest at a variable rate, or for short-term indebtedness that is maturing during the fiscal year and that is expected to be refinanced, the amount of payments during the fiscal year shall be estimated by the agency.

(2) The information contained in the resolution required by this subdivision shall be reviewed for accuracy by the chief fiscal officer of the agency.

(3) The legislative body shall additionally adopt the resolution required by this section.

(d) (1) Any agency that, pursuant to subdivision (b), determines that it will be unable in the 2002–03 fiscal year, to allocate the full amount required by subdivision (a) of Section 33681.7 shall, subject to paragraph (3), enter into an agreement with the legislative body by February 15, 2003, to fund the payment of the difference between the full amount required to be paid pursuant to subdivision (a) of Section 33681.7 and the amount available for allocation by the agency.

(2) The obligations imposed by paragraph (1) are hereby declared to be indebtedness incurred by the redevelopment agency to finance a portion of a redevelopment project within the meaning of Section 16 of

Article XVI of the California Constitution. This indebtedness shall be payable from tax revenues allocated to the agency pursuant to Section 33670, and any other funds received by the agency. The obligations imposed by paragraph (1) shall remain an indebtedness of the agency to the legislative body until paid in full, or until the agency and the legislative body otherwise agree.

(3) The agreement described in paragraph (1) shall be subject to these terms and conditions specified in a written agreement between the legislative body and the agency.

(e) If the agency fails, under either Section 33681.7 or subdivision (d), to transmit the full amount of funds required by Section 33681.7, is precluded by court order from transmitting that amount, or is otherwise unable to meet its full obligation pursuant to Section 33681.7, the county auditor, by no later than May 15, 2003, shall transfer any amount necessary to meet the obligation determined for that agency in subparagraph (D) of paragraph (2) of subdivision (a) of Section 33681.7 from the legislative body's property tax allocation pursuant to Chapter 6 (commencing with Section 95) of Part 0.5 of Division 1 of the Revenue and Taxation Code.

SEC. 18. Section 19521 of the Revenue and Taxation Code is amended to read:

19521. (a) The rate established under this section (referred to in other code sections as ''the adjusted annual rate'') shall be determined in accordance with Section 6621 of the Internal Revenue Code, except that:

(1) (A) For taxpayers other than corporations, the overpayment rate specified in Section 6621(a)(1) of the Internal Revenue Code shall be modified to be equal to the underpayment rate determined under Section 6621(a)(2) of the Internal Revenue Code.

(B) In the case of any corporation, for purposes of determining interest on overpayments for periods beginning before July 1, 2002, the overpayment rate specified in Section 6621(a)(1) of the Internal Revenue Code shall be modified to be equal to the underpayment rate determined under Section 6621(a)(2) of the Internal Revenue Code.

(C) In the case of any corporation, for purposes of determining interest on overpayments for periods beginning on or after July 1, 2002, the overpayment rate specified in Section 6621(a)(1) of the Internal Revenue Code shall be modified to be the lesser of 5 percent or the bond equivalent rate of 13-week United States Treasury bills, determined as follows:

(i) The bond equivalent rate of 13-week United States Treasury bills established at the first auction held during the month of January shall be utilized in determining the appropriate rate for the following July 1 to December 31, inclusive. Any such rate shall be rounded to the nearest

full percent (or, if a multiple of one-half of 1 percent, that rate shall be increased to the next highest full percent).

(ii) The bond equivalent rate of 13-week United States Treasury bills established at the first auction held during the month of July shall be utilized in determining the appropriate rate for the following January 1 to June 30, inclusive. Any such rate shall be rounded to the nearest full percent (or, if a multiple of one-half of 1 percent, that rate shall be increased to the next highest full percent).

(2) The determination specified in Section 6621(b) of the Internal Revenue Code shall be modified to be determined semiannually as follows:

(A) The rate for January shall apply during the following July through December, and

(B) The rate for July shall apply during the following January through June.

(b) (1) For purposes of this part, Part 10 (commencing with Section 17001), Part 11 (commencing with Section 23001), and any other provision of law referencing this method of computation, in computing the amount of any interest required to be paid by the state or by the taxpayer, or any other amount determined by reference to that amount of interest, that interest and that amount shall be compounded daily.

(2) Paragraph (1) shall not apply for purposes of computing the amount of any addition to tax under Section 19136 or 19142.

(c) Section 6621(c) of the Internal Revenue Code, relating to increase in underpayment rate for large corporate underpayments, is modified as follows:

(1) The applicable date shall be the 30th day after the earlier of either of the following:

(A) The date on which the proposed deficiency assessment is issued.

(B) The date on which the notice and demand is sent.

(2) This subdivision shall apply for purposes of determining interest for periods after December 31, 1991.

(3) Section 6621(c)(2)(B)(iii) of the Internal Revenue Code shall apply for purposes of determining interest for periods after December 31, 1998.

(d) Section 6621(d) of the Internal Revenue Code, relating to the elimination of interest on overlapping periods of tax overpayments and underpayments, shall not apply.

SEC. 20. Notwithstanding any other provision of law, the Secretary of the Technology, Trade, and Commerce Agency, with the approval of the Director of Finance, may direct the Controller to transfer specified funds of the agency identified by the Secretary to the General Fund for the purposes of implementing the unallocated reduction required by Item 2920-401 of Section 2.00 of the Budget Act of 2002.

SEC. 21. (a) Notwithstanding any other provision of law, the funds appropriated in Schedule (6) in Item 3790-301-6029 of Section 2.00 of the Budget Act of 2002 shall be available for acquisition, studies, preliminary plans, working drawings, and construction in accordance with Proposition 40. Any project funded from this section shall be subject to the State Public Works Board review and approval, pursuant to Section 13332.11 of the Government Code.

(b) Subdivision (a) shall become operative only if Assembly Bill 716 is enacted and becomes effective on or before January 1, 2003.

SEC. 22. Notwithstanding any other provision of law, the amount appropriated in Item 8830-001-0001 of Section 2.00 of the Budget Act of 2002 is $630,000, and the amount appropriated in Schedule (1) of that item is $645,000.

SEC. 23. (a) The sum of five million dollars ($5,000,000) is hereby appropriated from the Public Transportation Account in the State Transportation Fund to the Department of Transportation, for local assistance to the City of Schafter for the Southern San Joaquin Valley Intermodal Facility.

(b) Funds appropriated pursuant to this section shall be available for allocation by the department through June 30, 2005.

SEC. 24. (a) Funds that are appropriated in subdivision (b) of Section 2 of Assembly Bill 716 shall be available to the Department of Parks and Recreation for opportunity grants pursuant to that subdivision, and for state capital outlay projects. On or before December 15, 2002, and on or before December 15 annually thereafter, the Department of Parks and Recreation shall report to the Joint Legislative Budget Committee on all state capital outlay projects funded from subdivision (b) of Section 2 of Assembly Bill 716. To the extent the funds are used for a state capital outlay project, the project shall be subject to the State Public Works Board review and approval, pursuant to Section 13332.11 of the Government Code.

(b) Subdivision (a) shall become operative only if Assembly Bill 716 is enacted and becomes effective on or before January 1, 2003.

SEC. 25. Notwithstanding any other provision of law, funds appropriated by Item 3790-102-0001 (84) of Section 2.00 of the Budget Act of 1998 (Ch. 324, Stats. 1998) and Item 3790-101-0001 (181) of Section 2.00 of the Budget Act of 1999 (Ch. 50, Stats. 1999) to the Western Center Community Foundation: Western Center for Archaeology and Paleontology, and by Item 3790-101-0001 (152) of Section 2.00 of the Budget Act of 1999 (Ch. 50, Stats. 1999) to the City of San Jacinto: Regional Aquatic Center swimming pool shall be available for liquidation until June 30, 2005.

SEC. 26. Provision 3 of Item 1760-001-0666 of Section 2.00 of the Budget Act of 2002 is amended to read:

3. It is the intent of the Legislature that the departments that provide e-government services or transactions shall reimburse the Department of General Services (DGS) for the development, implementation, and maintenance of the state's centralized e-government systems. The DGS shall establish rates that departments shall be charged for the ongoing use and maintenance of the systems. Notwithstanding Item 9840-001-0988, Item 9840-001-0494, and Section 27.00 of this act, the Director of General Services may augment this item, by up to an aggregate of one and one-half percent in cases where the Legislature has provided funding in departmental budgets for e-government services. Any augmentation that is deemed to be necessary on a permanent basis shall be submitted for review as part of the normal budget development process. An augmentation shall be approved by the Department of Finance and shall not be made sooner than 30 days after written notification is provided to the Chairperson of the Senate Committee on Budget and Fiscal Review, the Chairperson of the Assembly Budget Committee, and the Chairperson of the Joint Legislative Budget Committee, or not sooner than whatever lesser time the Chairperson of the Joint Legislative Budget Committee may determine.

SEC. 27. 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. 28. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to make the necessary statutory changes to implement the Budget Act of 2002 at the earliest possible time, it is necessary that this act take effect immediately.

CHAPTER 1128

An act to amend Sections 14501, 14503, 14504, 14504.2, 41020, 41020.3, and 41344 of, to amend and repeal Section 14502 of, to add Sections 14502.1, 41344.1, and 42238.75 to, and to repeal Section 41609 of, the Education Code, and to amend Section 17558.5 of the

Government Code, relating to school districts, and making an appropriation therefor.

[Approved by Governor September 30, 2002. Filed with Secretary of State September 30, 2002.]

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

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

(a) The administration has expressed an intent to discontinue audits of school districts, charter schools, and county offices of education, funded by Item 8860-025-0001 of Section 2.00 of Chapter 50 of the Statutes of 1999, Item 8860-025-0001 of Section 2.00 of Chapter 52 of the Statutes of 2000, and Item 8860-025-0001 of Section 2.00 of Chapter 106 of the Statutes of 2001, and an intent to withdraw the findings of those audits.

(b) The Director of Finance has requested the Education Audits Appeal Panel to hold in abeyance any appeals of findings resulting from these audits.

(c) The administration and the public education community are committed to collaborating on development of an audit process that holds schools fiscally responsible in a fair and reasonable manner.

(d) Legislative action is required to effectuate termination of these audits and establish a new audit process.

SEC. 2. Section 14501 of the Education Code is amended to read:

14501. (a) As used in this chapter, ''financial and compliance audit'' shall be consistent with the definition provided in the ''Standards for Audits of Governmental Organizations, Programs, Activities, and Functions'' promulgated by the Comptroller General of the United States. Financial and compliance audits conducted under this chapter shall fulfill federal single audit requirements.

(b) As used in this chapter, ''compliance audit'' means an audit which ascertains and verifies whether or not funds provided through apportionment, contract, or grant, either federal or state, have been properly disbursed and expended as required by law or regulation or both.

SEC. 3. Section 14502 of the Education Code is amended to read:

14502. (a) The Controller, in consultation with the Department of Finance and the State Department of Education, shall develop a plan to review and report on financial and compliance audits. The plan shall commence with the 1984–85 fiscal year for audits of school districts and the offices of county superintendents of schools. The Controller, in consultation with the Department of Finance, the State Department of Education, representatives of the California School Boards Association, the California Association of School Business Officials, the California

County Superintendents Educational Service Association, the California Teachers Association, and the California Society of Certified Public Accountants, shall prescribe the statements and other information to be included in the audit reports filed with the state and shall develop an audit guide to carry out the purposes of this chapter.

(b) For the audit of school districts or county offices of education electing to take formal action pursuant to Sections 22714 and 44929, the audit guide shall be in the form and require the information prescribed by the Controller, including, but not limited to, the following:

(1) The number and type of positions vacated.

(2) The age and service credit of the retirees receiving the additional service credit provided by Sections 22714 and 44929.

(3) A comparison of the salary and benefits of each retiree receiving the additional service credit with the salary and benefits of the replacement employee, if any.

(4) The resulting retirement cost, including interest, if any, and postretirement health care benefits costs, incurred by the employer.

(c) The Controller shall annually prepare a cost analysis, based on the information included in the audit reports for the prior fiscal year, to determine the net savings or costs resulting from formal actions taken by school districts and county offices of education pursuant to Sections 22714 and 44929, and shall report the results of the cost analysis to the Governor and the Legislature by April 1 of each year.

(d) All costs incurred by the Controller to implement subdivision (b) shall be absorbed by the Controller.

(e) This section shall be used to prepare the audit guide for school district audits for the 2002–03 fiscal year.

(f) This section shall become inoperative on July 1, 2003, and, as of January 1, 2004, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2004, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 4. Section 14502.1 is added to the Education Code, to read:

14502.1. (a) The Controller, in consultation with the Department of Finance and the State Department of Education, shall develop a plan to review and report on financial and compliance audits. The plan shall commence with the 2003–04 fiscal year for audits of school districts, other local education agencies, and the offices of county superintendents of schools. The Controller, in consultation with the Department of Finance, the State Department of Education, and representatives of the California School Boards Association, the California Association of School Business Officials, the California County Superintendents Educational Service Association, the California Teachers Association, the California Society of Certified Public Accountants, shall recommend the statements and other information to be included in the

audit reports filed with the state, and shall propose the content of an audit guide to carry out the purposes of this chapter. A supplement to the audit guide may be suggested in the audit year, following the above process, to address issues resulting from new legislation in that year that changes the conditions of apportionment. The proposed content of the audit guide and any supplement to the audit guide shall be submitted by the Controller to the Education Audits Appeal Panel for review and possible amendment.

(b) The audit guide and any supplement shall be adopted by the Education Audits Appeal Panel pursuant to the rulemaking procedures 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. It is the intent of the Legislature that, for the 2003–04 fiscal year, the audit guide be adopted by July 1 of the fiscal year to be audited. A supplemental audit guide may be adopted to address legislative changes to the conditions of apportionment. It is the intent of the Legislature that supplements be adopted before March 1 of the audit year. Commencing with the 2004–05 fiscal year, and each fiscal year thereafter, the audit guide shall be adopted by July 1 of the fiscal year to be audited. A supplemental audit guide may be adopted to address legislative changes to the conditions of apportionment. The supplements shall be adopted before March 1 of the audit year. To meet these goals and to ensure the accuracy of the audit guide, the process for adopting emergency regulations set forth in Section 11346.1 of the Government Code may be followed to adopt the guide and supplemental audit guide. It is the intent of the Legislature that once the audit guide has been adopted for a fiscal year, as well as any supplement for that year, thereafter only suggested changes to the audit guide and any additional supplements need be adopted pursuant to the rulemaking procedures of the Administrative Procedure Act. The audit guide and any supplement shall be issued in booklet form and may be made available by any means deemed appropriate. The Controller and consultants in the development of the suggested audit guide and any supplement shall work cooperatively on a timeline that will allow the education audits appeal panel to meet the July 1 and March 1 issuance dates. Consistent with current practices for development of the audit guide before the 2003–04 fiscal year, the Controller shall provide for the adoption of procedures and timetables for the development of the suggested audit guide, any supplement, and the format for additions, deletions, and revisions.

(c) For the audit of school districts or county offices of education electing to take formal action pursuant to Sections 22714 and 44929, the audit guide content proposed by the Controller shall include, but not be limited to, the following:

(1) The number and type of positions vacated.

(2) The age and service credit of the retirees receiving the additional service credit provided by Sections 22714 and 44929.

(3) A comparison of the salary and benefits of each retiree receiving the additional service credit with the salary and benefits of the replacement employee, if any.

(4) The resulting retirement cost, including interest, if any, and postretirement health care benefits costs, incurred by the employer.

(d) The Controller shall annually prepare a cost analysis, based on the information included in the audit reports for the prior fiscal year, to determine the net savings or costs resulting from formal actions taken by school districts and county offices of education pursuant to Sections 22714 and 44929, and shall report the results of the cost analysis to the Governor and the Legislature by April 1 of each year.

(e) All costs incurred by the Controller to implement subdivision (c) shall be absorbed by the Controller.

(f) This section shall become operative July 1, 2003 and shall apply to the preparation of the audit guide for school district audits commencing with the 2003–04 fiscal year.

SEC. 5. Section 14503 of the Education Code is amended to read:

14503. (a) Financial and compliance audits shall be performed in accordance with General Accounting Office standards for financial and compliance audits. The audit guide prepared by the Controller shall be used in the performance of these audits until an audit guide is adopted by the Education Audits Appeal Panel pursuant to Section 14502.1. When an audit guide is adopted by that panel, the adopted audit guide shall be used in the performance of these audits. Every audit report shall specifically and separately address each of the state program compliance requirements included in the audit guide, stating whether or not the district is in compliance with those requirements. For each state program compliance requirement included in the audit guide, every audit report shall further state that the suggested audit procedures included in the audit guide for that requirement were followed in the making of the audit, if that is the case, or, if not, what other procedures were followed. If a local education agency is not in compliance with a requirement that is a condition of eligibility for the receipt of state funds, the audit report shall include a statement of the number of units of average daily attendance, if any, that were inappropriately reported for apportionment.

(b) An independent auditor shall not engage in financial or compliance audits unless, within three years of commencing the first of the audits, and every successive three years thereafter, the auditor completes a quality control review in accordance with General Accounting Office standards. The time period between commencement of the first audit, or completion of a quality control review, and completion of a subsequent quality control review shall be calculated

from the first day of the month following commencement of the audit or completion of the quality control review. Notwithstanding this subdivision, independent auditors may continue to perform any financial and compliance audits until January 1, 1994.

SEC. 6. Section 14504 of the Education Code is amended to read:

14504. To determine the practicability and effectiveness of the audits and audit guide, the Controller shall, on an annual basis, review and monitor the audit reports performed by independent auditors. The Controller shall determine whether audit reports are in conformance with reporting provisions of subdivision (a) of Section 14503 and shall notify each local education agency, office of the responsible county superintendent of schools, the Superintendent of Public Instruction, the Department of Finance, and the auditor regarding each determination. The local education agency or the county superintendent of schools contracting for the financial and compliance audit shall include a statement that will provide the Controller access to audit working papers.

SEC. 7. Section 14504.2 of the Education Code is amended to read:

14504.2. (a) The Controller may perform quality control reviews of audit working papers to determine whether audits are performed in conformity with subdivision (a) of Section 14503. The Department of Finance may refer an independent auditor of a school district to the Controller for a review pursuant to this section if the Department of Finance finds that an audit of a school district was conducted in a manner that may constitute noncompliance with subdivision (a) of Section 14503. The Controller shall communicate the results of his or her reviews to the Department of Finance, the independent auditor, and the school district or office of the county superintendent of schools for which the audit was performed, and shall review his or her findings with the independent auditor.

(b) Prior to the performance of any quality control reviews, the Controller shall develop and publish guidelines and standards for those reviews. Pursuant to the development of those guidelines and standards, the Controller shall provide opportunity for public comment.

(c) (1) The Controller shall conduct a quality control review of the audit working papers of the independent auditor who performed the audits for a local education agency for the prior three fiscal years if any of the following circumstances exists:

(A) The local education agency has received an emergency apportionment pursuant to Article 2 (commencing with Section 41320) or Article 2.5 (commencing with Section 41325) of Chapter 3 of Part 24.

(B) The budget of the local education agency is disapproved or the local education agency has received a negative certification on any

budget or interim financial report, as defined in Section 42131, during the current or preceding fiscal year.

(C) The responsible county superintendent of schools has otherwise determined that a lack of going concern exists for a local education agency pursuant to Section 42127.6.

(2) If the quality control review of the Controller indicates that the audit was conducted in a manner that may constitute unprofessional conduct as defined pursuant to Section 5100 of the Business and Professions Code, including, but not limited to, gross negligence resulting in a material misstatement in the audit, the Controller shall refer the case to the California Board of Accountancy. If the California Board of Accountancy finds that the independent auditor conducted an audit in an unprofessional manner, the independent auditor is prohibited from performing any audit of a local education agency for a period of three years, in addition to any other penalties that the California Board of Accountancy may impose.

(d) In any matter that is referred to the California Board of Accountancy under subparagraph (A) of paragraph (1) of subdivision (c), the Controller may suspend the independent auditor from performing any local education agency audits pending final disposition of the matter by the California Board of Accountancy if the Controller gives the independent auditor notice and an opportunity to respond to that suspension. The independent auditor shall be given credit for any period of suspension if the California Board of Accountancy prohibits the independent auditor from performing audits of the local education agency under subdivision (c). In no event may the Controller suspend an independent auditor under this subdivision for a period of longer than three years.

(e) The county superintendent of schools or the county board of education may refer an independent auditor of a local education agency to the California Board of Accountancy for action pursuant to subdivision (c) if an audit of a local education agency was conducted in a manner that may constitute unprofessional conduct as defined by Section 5100 of the Business and Professions Code, including, but not limited to, gross negligence resulting in a material misstatement in the audit.

SEC. 8. Section 41020 of the Education Code is amended to read:

41020. (a) It is the intent of the Legislature to encourage sound fiscal management practices among school districts for the most efficient and effective use of public funds for the education of children in California by strengthening fiscal accountability at the district, county, and state levels.

(b) (1) Not later than the first day of May of each fiscal year, each county superintendent of schools shall provide for an audit of all funds

under his or her jurisdiction and control and the governing board of each local education agency shall either provide for an audit of the books and accounts of the local education agency, including an audit of income and expenditures by source of funds, or make arrangements with the county superintendent of schools having jurisdiction over the local education agency to provide for that auditing.

(2) A contract to perform the audit of a local education agency that has a disapproved budget or has received a negative certification on any budget or interim financial report during the current fiscal year or either of the two preceding fiscal years, or for which the county superintendent of schools has otherwise determined that a lack of going concern exists, is not valid unless approved by the responsible county superintendent of schools and the governing board.

(3) If the governing board of a local education agency has not provided for an audit of the books and accounts of the local education agency by April 1, the county superintendent of schools having jurisdiction over the local education agency shall provide for the audit of each local education agency.

(4) An audit conducted pursuant to this section shall fully comply with the Government Auditing Standards issued by the Comptroller General of the United States.

(5) For purposes of this section, ''local education agency'' does not include community colleges.

(c) Each audit conducted in accordance with this section shall include all funds of the local education agency, including the student body and cafeteria funds and accounts and any other funds under the control or jurisdiction of the local education agency. Each audit shall also include an audit of pupil attendance procedures.

(d) All audit reports for the 2002–03 fiscal year, and for each subsequent fiscal year, shall be developed and reported using a format established by the Controller after consultation with the Superintendent of Public Instruction and the Director of Finance.

(e) (1) The cost of the audits provided for by the county superintendent of schools shall be paid from the county school service fund and the county superintendent of schools shall transfer the pro rata share of the cost chargeable to each district from district funds.

(2) The cost of the audit provided for by a governing board shall be paid from local education agency funds. The audit of the funds under the jurisdiction and control of the county superintendent of schools shall be paid from the county school service fund.

(f) (1) The audits shall be made by a certified public accountant or a public accountant, licensed by the California Board of Accountancy, and selected by the local education agency, as applicable, from a directory of certified public accountants and public accountants deemed

by the Controller as qualified to conduct audits of local education agencies, which shall be published by the Controller not later than December 31 of each year.

(2) Commencing with the 2003–04 fiscal year and except as provided in subdivision (d) of Section 41320.1, it is unlawful for a public accounting firm to provide audit services to a local educational agency if the lead audit partner, or coordinating audit partner, having primary responsibility for the audit, or the audit partner responsible for reviewing the audit, has performed audit services for that local educational agency in each of the six previous fiscal years. The Education Audits Appeal Panel may waive this requirement if the panel finds that no otherwise eligible auditor is available to perform the audit.

(3) It is the intent of the Legislature that, notwithstanding paragraph (2) of this subdivision, the rotation within public accounting firms conform to provisions of the federal Sarbanes-Oxley Act of 2002 (P.L. 107-204; 15 U.S.C. Sec. 7201, et seq.), and upon release of the report required by the act of the Comptroller General of the United States addressing the mandatory rotation of registered public accounting firms, the Legislature intends to reconsider the provisions of paragraph (2). In determining which certified public accountants and public accountants shall be included in the directory, the Controller shall use the following criteria:

(A) The certified public accountants or public accountants shall be in good standing as certified by the Board of Accountancy.

(B) The certified public accountants or public accountants, as a result of a quality control review conducted by the Controller pursuant to Section 14504.2, shall not have been found to have conducted an audit in a manner constituting noncompliance with subdivision (a) of Section 14503.

(g) (1) The auditor's report shall include each of the following:

(A) A statement that the audit was conducted pursuant to standards and procedures developed in accordance with Chapter 3 (commencing with Section 14500) of Part 9 of Division 1 of Title 1.

(B) A summary of audit exceptions and management improvement recommendations.

(C) Each local education agency's audit shall include an auditor's evaluation on whether there is substantial doubt about the local agency's ability to continue as a going concern for a reasonable period of time. This evaluation shall be based on the Statement of Auditing Standards (SAS) No. 59, as issued by the AICPA regarding disclosure requirements relating the entity's ability to continue as a going concern.

(2) To the extent possible, a description of correction or plan of correction shall be incorporated in the audit report, describing the specific actions that are planned to be taken, or that have been taken, to

correct the problem identified by the auditor. The descriptions of specific actions to be taken or that have been taken shall not solely consist of general comments such as ''will implement,'' ''accepted the recommendation,'' or ''will discuss at a later date.''

(h) Not later than December 15, a report of each local education agency audit for the preceding fiscal year shall be filed with the county superintendent of schools of the county in which the local education agency is located, the State Department of Education, and the Controller. The Superintendent of Public Instruction shall make any adjustments necessary in future apportionments of all state funds, to correct any audit exceptions revealed by those audit reports.

(i) Commencing with the 2002–03 audit of local education agencies pursuant to this section, each county superintendent of schools shall be responsible for reviewing the audit exceptions contained in an audit of a local education agency under his or her jurisdiction related to attendance, inventory of equipment, internal control, and any miscellaneous items, and determining whether the exceptions have been either corrected or an acceptable plan of correction has been developed.

(j) Upon submission of the final audit report to the governing board of each local education agency and subsequent receipt of the audit by the county superintendent of schools having jurisdiction over the local education agency, the county office of education shall do all of the following:

(1) Review audit exceptions related to attendance, inventory of equipment, internal control, and other miscellaneous exceptions. Attendance exceptions or issues shall include, but not be limited to, those related to revenue limits, adult education, and independent study.

(2) If a description of the correction or plan of correction has not been provided as part of the audit required by this section, then the county superintendent of schools shall notify the local education agency and request the governing board of the local education agency to provide to the county superintendent of schools a description of the corrections or plan of correction by March 15.

(3) Review the description of correction or plan of correction and determine its adequacy. If the description of the correction or plan of correction is not adequate, the county superintendent of schools shall require the local education agency to resubmit that portion of its response that is inadequate.

(k) Each county superintendent of schools shall certify to the Superintendent of Public Instruction and the Controller, not later than May 15, that his or her staff has reviewed all audits of local education agencies under his or her jurisdiction for the prior fiscal year, that all exceptions that the county superintendent was required to review were reviewed, and that all of those exceptions, except as otherwise noted in

the certification, have been corrected by the local education agency or that an acceptable plan of correction has been submitted to the county superintendent of schools. In addition, the county superintendent shall identify, by local education agency, any attendance-related audit exception or exceptions involving state funds, and require the local education agency to which the audit exceptions were directed to submit appropriate reporting forms for processing by the Superintendent of Public Instruction.

(*l*) In the audit of a local education agency for a subsequent year, the auditor shall review the correction or plan or plans of correction submitted by the local education agency to determine if the exceptions have been resolved. If not, the auditor shall immediately notify the appropriate county office of education and the State Department of Education and restate the exception in the audit report. After receiving that notification, the State Department of Education shall either consult with the local education agency to resolve the exception or require the county superintendent of schools to follow up with the local education agency.

(m) (1) The Superintendent of Public Instruction shall be responsible for ensuring that local education agencies have either corrected or developed plans of correction for any one or more of the following:

(A) All federal and state compliance audit exceptions identified in the audit.

(B) Any exceptions that the county superintendent certifies as of May 15 have not been corrected.

(C) Any repeat audit exceptions that are not assigned to a county superintendent to correct.

(2) In addition, the Superintendent of Public Instruction shall be responsible for ensuring that county superintendents of schools and each county board of education that serves as the governing board of a local education agency either correct all audit exceptions identified in the audits of county superintendents of schools and of the local education agencies for which the county boards of education serve as the governing boards or develop acceptable plans of correction for those exceptions.

(3) The Superintendent of Public Instruction shall report annually to the Controller on his or her actions to ensure that school districts, county superintendents of schools, and each county board of education that serves as the governing board of a school district have either corrected or developed plans of correction for any of the exceptions noted pursuant to paragraph (1).

(n) To facilitate correction of the exceptions identified by the audits issued pursuant to this section, commencing with 2002–03 audits pursuant to this section, the Controller shall require auditors to

categorize audit exceptions in each audit report in a manner that will make it clear to both the county superintendent of schools and the Superintendent of Public Instruction which exceptions they are responsible for ensuring the correction of by a local education agency. In addition, the Controller annually shall select a sampling of county superintendents of schools and perform a followup of the audit resolution process of those county superintendents of schools and report the results of that followup to the Superintendent of Public Instruction and the county superintendents of schools that were reviewed.

(o) County superintendents of schools shall adjust subsequent local property tax requirements to correct audit exceptions relating to local education agency tax rates and tax revenues.

(p) If a governing board or county superintendent of schools fails or is unable to make satisfactory arrangements for the audit pursuant to this section, the Controller shall make arrangements for the audit and the cost of the audit shall be paid from local education agency funds or the county school service fund, as the case may be.

(q) Audits of regional occupational centers and programs are subject to the provisions of this section.

(r) Nothing in this section shall be construed to authorize examination of, or reports on, the curriculum used or provided for in any local education agency.

(s) Notwithstanding any other provision of law, a nonauditing, management, or other consulting service to be provided to a local education agency by a certified public accounting firm while the certified public accounting firm is performing an audit of the agency pursuant to this section must be in accord with Government Accounting Standards, Amendment No. 3, as published by the United States General Accounting Office.

SEC. 9. Section 41020.3 of the Education Code is amended to read:

41020.3. By January 31 of each year, the governing body of each local education agency shall review, at a public meeting, the annual audit of the local education agency for the prior year, any audit exceptions identified in that audit, the recommendations or findings of any management letter issued by the auditor, and any description of correction or plans to correct any exceptions or management letter issue. This review shall be placed on the agenda of the meeting pursuant to Section 35145.

SEC. 10. Section 41344 of the Education Code is amended to read:

41344. (a) If, as the result of an audit or review, a local education agency is required to repay an apportionment significant audit exception, the Superintendent of Public Instruction and the Director of Finance, or their designees shall jointly establish a plan for repayment of state school funds that the local education agency received on the basis

of average daily attendance, or other data, that did not comply with statutory or regulatory requirements that were conditions of the apportionments. A local education agency must request a repayment plan within 90 days of receiving the final audit report or review, within 30 days of receiving a final determination regarding an appeal pursuant to subdivision (d), or, in the absence of an appeal pursuant to subdivision (d), within 30 days of receiving a determination of a summary review pursuant to subdivision (d) of Section 41344.1. At the time the local education agency is notified, the Controller shall also be notified of the repayment plan. The repayment plan shall be established in accordance with the following:

(1) The Controller shall withhold the disallowed amount at the next principal apportionment or pursuant to paragraph (2), unless subdivision (d) or subdivision (d) of Section 41344.1 applies, in which case the disallowed amount shall be withheld, at the next principal apportionment or pursuant to paragraph (2) following the determination regarding the appeal or summary appeal. In calculating the disallowed amount, the Controller shall determine the total amount of overpayment received by the local education agency on the basis of average daily attendance, or other data, reported by the local education agency that did not comply with one or more statutory or regulatory requirements that are conditions of apportionment.

(2) If the Superintendent of Public Instruction and the Director of the Department of Finance concur that repayment of the full liability in the current fiscal year would constitute a severe financial hardship for the local agency, they may approve a repayment plan of equal annual payments over a period of up to eight years. The repayment plan shall include interest on each year's outstanding balance at the rate earned on the state's short-term pooled investment fund during that year. The Superintendent of Public Instruction and the Director of the Department of Finance shall jointly establish this repayment plan. The Controller shall withhold amounts pursuant to the repayment plan.

(3) If the Superintendent of Public Instruction and the Director of the Department of Finance do not jointly establish a repayment plan, the State Controller shall withhold the entire disallowed amount determined pursuant to paragraph (1) at the next principal apportionment.

(b) For purposes of computing average daily attendance pursuant to Section 42238.5, a local educational agency's prior fiscal year average daily attendance shall be reduced by an amount equal to any average daily attendance disallowed in the current year, by an audit or review, as defined in subdivision (e).

(c) Notwithstanding any other provision of law, this section may not be waived under any authority set forth in this code except as provided in this section or Section 41344.1.

(d) Within 60 days of the date on which a local education agency receives a final audit report resulting from an audit or review or within 30 days of receiving a determination of a summary review pursuant to subdivision (d) Section 41344.1, a local agency may appeal a finding contained in the final report, pursuant to Section 41344.1. Within 90 days of the date on which the appeal is received by the panel, a hearing shall be held at which the local agency may present evidence or arguments if the local education agency believes that the final report contains any finding that was based on errors of fact or interpretation of law. A repayment schedule may not commence until the panel reaches a determination regarding the appeal. If the panel determines that the local agency is correct in its assertion, in whole or in part, the allowable portion of any apportionment payment that was withheld shall be paid at the next principal apportionment.

(e) As used in this section, ''audit or review'' means an audit conducted by the Controller's office, an annual audit conducted by a certified public accountant or a public accountant firm pursuant to Section 41020, and an audit or review conducted by a governmental agency that provided the local education agency with an opportunity to provide a written response.

SEC. 11. Section 41344.1 is added to the Education Code, to read:

41344.1. (a) The Education Audit Appeals Panel is hereby established as a separate state agency. Its membership shall consist of the Superintendent of Public Instruction, the Director of the Department of Finance, and the Chief Executive Officer of the Fiscal Crisis and Management Assistance Team established pursuant to Section 42127.8 or their designees. The panel shall have the authority to expend funds, hire staff, make contracts, sue and be sued, and issue regulations in furtherance of its duties.

(b) The panel shall hear appeals filed pursuant to subdivision (d) of Section 41344. The Controller shall be a party to all appeals. The State Department of Education and the Department of Finance may, at their election, timely intervene as a party in any appeal. The panel shall consider audit appeals pursuant to 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), except that it may adopt regulations specifying special pleadings that shall govern audit appeals. The panel may approve settlements and make findings of fact and interpretations of law.

(c) Compliance with all legal requirements is a condition to the state's obligation to make apportionments. A condition may be deemed satisfied if the panel finds there has been compliance or substantial compliance with all legal requirements. ''Substantial compliance''

means nearly complete satisfaction of all material requirements of a funding program that provide an educational benefit substantially consistent with the program's purpose. A minor or inadvertent noncompliance may be grounds for a finding of substantial compliance provided that the local education agency can demonstrate it acted in good faith to comply with the conditions established in law or regulation necessary for apportionment of funding. The panel may further define ''substantial compliance'' by issuing regulations or through adjudicative opinions, or both. If the panel finds there has been substantial compliance, the panel may waive or reduce the reimbursement and may also order other remedial measures sufficient to induce full compliance in the future. Other remedial measures may include, but are not limited to, restoration of a reduction if full compliance is not rendered in the future, ordering special audits, and requiring special training.

(d) In addition to the normal appeal process specified above, there is hereby created a voluntary, informal, summary appeals process for noncompliant audit exceptions that clearly constitute substantial compliance as that term is defined in subdivision (c). Requests for summary review shall be made to the executive officer of the panel who may seek comment from the Department of Finance or Superintendent of Public Instruction. Summary review shall be sought within 30 days of the date on which a local education agency receives a final audit report resulting from an audit or review.

(1) If the executive officer concludes the conditions for finding substantial compliance are not clearly met or involve substantial questions of fact, the executive officer may deny the request for summary review and the appellant may pursue its claim through the normal appeal process.

(2) For appeals in which the total audit exceptions for full repayment constitute less than 150 units of average daily attendance or seven hundred fifty thousand dollars ($750,000), whichever is less, the executive officer may order reduced reimbursement upon a finding of substantial compliance and that other remedial measures are sufficient to induce full compliance in the future.

(3) For appeals in which the total audit exceptions for full repayment meet or exceed 150 units of average daily attendance or seven hundred fifty thousand dollars ($750,000), whichever is greater, the executive officer may propose reduced reimbursement upon a finding of substantial compliance and order other remedial measures that are sufficient to induce full compliance in the future, if he or she has the written approval of the Department of Finance and the Superintendent of Public Instruction. The executive officer shall provide the details of the proposed settlement and the rationale in writing to the Department

of Finance and Superintendent of Public Instruction and allow at least 30 days for their review.

(4) The right to appeal pursuant to subdivision (d) of Section 41344 is independent of this subdivision and an appellant may pursue his or her appeal under subdivision (b) regardless of the result under this subdivision. Local education agencies that have unresolved audit appeals pursuant to subdivision (d) of Section 41344 pending on January 1, 2003, may file a request for summary review under this subdivision for a period of 60 days after January 1, 2003.

SEC. 12. Section 41609 of the Education Code is repealed.

SEC. 13. Section 42238.75 is added to the Education Code, to read:

42238.75. Notwithstanding any other provision of law:

(a) All completed audits, including those on appeal, of school districts, charter schools, and county offices of education funded by Item 8860-025-0001 of Section 2.00 of Chapter 50 of the Statutes of 1999, Item 8860-025-0001 of Section 2.00 of Chapter 52 of the Statutes of 2000, and Item 8860-025-0001 of Section 2.00 of Chapter 106 of the Statutes of 2001, and any findings of those audits, are withdrawn, and no loss of apportionment arising from the findings of those audits shall be realized.

(b) All audits funded by Item 8860-025-0001 of Section 2.00 of Chapter 50 of the Statutes of 1999, Item 8860-025-0001 of Section 2.00 of Chapter 52 of the Statutes of 2000, and Item 8860-025-0001 of Section 2.00 of Chapter 106 of the Statutes of 2001, shall be discontinued.

(c) The Controller shall notify all school districts, charter schools, and county offices of education that it is no longer necessary to retain records supporting pupil attendance and excused absences used for purposes of calculating average daily attendance during the 1996–97 fiscal year.

SEC. 14. Section 17558.5 of the Government Code is amended to read:

17558.5. (a) A reimbursement claim for actual costs filed by a local agency or school district pursuant to this chapter is subject to the initiation of an audit by the Controller no later than three years after the date that the actual reimbursement claim is filed or last amended, whichever is later. However, if no funds are appropriated or no payment is made to a claimant for the program for the fiscal year for which the claim is filed, the time for the Controller to initiate an audit shall commence to run from the date of initial payment of the claim.

(b) The Controller shall notify the claimant in writing within 30 days after issuance of a remittance advice of any adjustment to a claim for reimbursement that results from an audit or review. The notification shall specify the claim components adjusted, the amounts adjusted, and

the reason for the adjustment. Remittance advices and other notices of payment action shall not constitute notice of adjustment from an audit or review.

(c) Nothing in this section shall be construed to limit the adjustment of payments when inaccuracies are determined to be the result of the intent to defraud, or when a delay in the completion of an audit is the result of willful acts by the claimant or inability to reach agreement on terms of final settlement.

(d) This section shall become operative on July 1, 1996.

SEC. 14.5. Section 17558.5 of the Government Code is amended to read:

17558.5. (a) A reimbursement claim for actual costs filed by a local agency or school district pursuant to this chapter is subject to the initiation of an audit by the Controller no later than three years after the date that the actual reimbursement claim is filed or last amended, whichever is later. However, if no funds are appropriated or no payment is made to a claimant for the program for the fiscal year for which the claim is filed, the time for the Controller to initiate an audit shall commence to run from the date of initial payment of the claim.

(b) The Controller shall notify the claimant in writing within 30 days after issuance of a remittance advice of any adjustment to a claim for reimbursement that results from an audit or review. The notification shall specify the claim components adjusted, the amounts adjusted, interest charges on claims adjusted to reduce the overall reimbursement to the local agency or school district, and the reason for the adjustment. Remittance advices and other notices of payment action shall not constitute notice of adjustment from an audit or review.

(c) The interest rate charged by the Controller on reduced claims shall be set at the Pooled Money Investment Account rate and shall be imposed on the dollar amount of the overpaid claim from the time the claim was paid until overpayment is satisfied.

(d) Nothing in this section shall be construed to limit the adjustment of payments when inaccuracies are determined to be the result of the intent to defraud, or when a delay in the completion of an audit is the result of willful acts by the claimant or inability to reach agreement on terms of final settlement.

SEC. 15. The sum of two million nine hundred fifty thousand dollars ($2,950,000) is hereby appropriated from the General Fund according to the following schedule:

(a) The sum of five hundred twenty-five thousand dollars ($525,000) to the Controller for the purposes of reviewing annual financial and compliance audits performed for local education agencies and developing and maintaining the directory of certified public accountant and public accountant pursuant to subdivision (f) of Section 41020 of the

Education Code, and for work associated with audit appeals pursuant to Article 3 (commencing with Section 41344) of Chapter 3 of Part 24 of the Education Code.

(b) The sum of one million six hundred thousand dollars ($1,600,000) to the Controller for the purposes of auditing reimbursable state mandate claims filed by local government entities and local education agencies.

(c) The sum of seven hundred fifty thousand dollars ($750,000) to the Controller for allocation to the Education Audit Appeals Panel established pursuant to Section 41344.1 of the Education Code for general support of hearing appeals as set forth under Section 41344.1 of the Education Code.

(d) The sum of seventy-five thousand dollars ($75,000) to the State Department of Education for one Staff Services Analyst/Associate Governmental Program Analyst position and operating expense for workload associated with the implementation of this act.

SEC. 16. Section 14.5 of this bill incorporates amendments to Section 17558.5 of the Government Code proposed by this bill and AB 3000. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2003, (2) each bill amends Section 17558.5 of the Government Code, and (3) this bill is enacted after AB 3000, in which case Section 17558.5 of the Government Code, as amended by AB 3000, shall remain operative only until the operative date of this bill, at which time Section 14.5 of this bill shall become operative, and Section 14 of this bill shall not become operative.

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.

CHAPTER 1129

An act to amend Section 42407 of, to add Section 40720 to, to add Chapter 9.8 (commencing with Section 44299.80) to Part 5 of Division 26 of, to add and repeal Section 40720.5 of, and to repeal Section 44299.83 of, the Health and Safety Code, relating to air pollution.

[Approved by Governor September 30, 2002. Filed with Secretary of State September 30, 2002.]

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

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

(a) Air pollution in the state is an ongoing problem that impacts the health and safety of its residents.

(b) Long lines at California marine terminals and ports often become congested and force trucks to idle for extended periods of time.

(c) Idling trucks emit air contaminants, including oxides of nitrogen (NO_x), carbon dioxide (CO_2), and particulate matter.

(d) Many marine terminals and ports in the state are close in proximity to homes and businesses.

(e) Owners and operators of marine terminals and ports generally do not directly own or control trucks that conduct transactions at their site. However, due to the manner in which some marine terminals and ports are operated, including, but not limited to, setting short gate hours and maintaining systems that do not spread truck transactions throughout the day, and because trucks must operate within the systems established by the owners and operators of marine terminals, trucks are forced to idle for extended periods of time and create severe congestion on public roadways in communities at and near marine terminals and ports.

(f) It is the intent of the Legislature to prohibit extended idling by trucks at marine terminals and ports in the state in order to protect the health and safety of all Californians.

(g) It is the intent of the Legislature, in enacting the provisions of this act, to reduce only emissions of particulate matter that are caused by trucks idling at marine terminals and ports in the state.

(h) It is not the intent of the Legislature, in providing a system for the provisions of grants for the reduction of emission of particulate matter at marine terminals and ports in the state, to delegate any authority for the control of emissions from mobile sources to districts.

SEC. 2. Section 40720 is added to the Health and Safety Code, to read:

40720. (a) Each marine terminal in the state shall operate in a manner that does not cause the engines on trucks to idle or queue for more than 30 minutes while waiting to enter the gate into the marine terminal.

(1) Any owner or operator of a marine terminal that operates in violation of this subdivision is subject to a $250 fine per vehicle per violation.

(2) Marine terminals in the state shall be monitored by the district with jurisdiction over that terminal to ensure compliance with this subdivision.

(3) Citations for violations of this subdivision shall be issued by the applicable district, and shall include the truck license plate number, the

name of the marine terminal and port at which the violation occurred, and the date and time of the violation.

(4) Any action taken by the marine terminal to assess, or seek reimbursement from, the driver or owner of a truck for a violation of this subdivision shall constitute a violation of Article 3 (commencing with Section 42400) of Chapter 4 of Part 4.

(5) Any owner or operator of a marine terminal or port, or any agent thereof, who takes any action intended to avoid or circumvent the requirements of this subdivision or to avoid or circumvent the reduction of emissions of particulate matter from idling or queuing trucks is subject to a seven hundred fifty dollar ($750) fine per vehicle per violation, including, but not limited to, either of the following actions:

(A) Diverting an idling truck to area freeways or alternate staging areas, including, but not limited to, requiring a truck to idle or queue inside the gate of a marine terminal.

(B) Requiring or directing a truckdriver to turn on and off an engine while queuing.

(6) The owner or operator of a marine terminal does not violate this subdivision by causing a truck to idle for more than 30 minutes while waiting to enter the gate into the marine terminal, if the delay is caused by acts of God, strikes, or declared state and federal emergencies, or if the district finds that an unavoidable or unforeseeable event caused trucks to idle and that the terminal is in good faith compliance with this section.

(7) Failure to pay a fine imposed pursuant to paragraph (1) or (5) shall constitute a violation of Article 3 (commencing with Section 42400) of Chapter 4 of Part 4.

(b) (1) Subdivision (a) does not apply to any marine terminal that provides, as determined by the district, two continuous hours of uninterrupted, fully staffed receiving and delivery gates two hours prior to and after, peak commuter hours each day, at least five days per week.

(2) For the purposes of this subdivision, ''peak commuter hours'' shall be those hours determined by the district, in consultation with the owners and operators of the marine terminals within each district's jurisdiction and any labor union that is represented at those marine terminals. The district shall notify the marine terminals of the final determination of the peak commuter hours.

(c) Subdivision (a) does not apply to any marine terminal that operates fully staffed receiving and delivery gates for 65 hours, five days per week, if that marine terminal is located at a port that processes less than 3 million containers (20-foot equivalent units (TEUs)) annually.

(d) Subdivision (a) does not apply to any marine terminal that operates fully staffed receiving and delivery gates for 70 hours, five days

per week, if that marine terminal is located at a port that processes more than 3 million containers (20-foot equivalent units (TEUs)) annually.

(e) The district shall determine the necessary level of monitoring and enforcement commensurate with the level of the truck idling problem existing within its jurisdiction.

(f) For the purposes of this section, ''marine terminal'' means a facility that meets all of the following criteria:

(1) Is located at a bay or harbor.

(2) Is primarily used for loading or unloading containerized cargo onto or off of a ship or marine vessel.

(3) Contains one or more of the following:

(A) Piers.

(B) Wharves.

(C) Slips.

(D) Berths.

(E) Quays.

(4) Is located at a port that processes 100,000 or more containers (20-foot equivalent units (TEUs)) annually.

(g) Notwithstanding subdivision (a), if a marine terminal implements a scheduling or appointment system for trucks to enter the terminal, the terminal shall be subject to a fine pursuant to subdivision (a) only for a truck that makes use of the system and whose engine idles for more than 30 minutes while waiting to enter the gate into the terminal, commencing from the start of the appointment or the time the truck arrives, whichever is later. The scheduling or appointment system shall meet all of the following requirements:

(1) Provide appointments on a first-come, first-served basis.

(2) Provide appointments that last at least 60 minutes and are continuously staggered throughout the day.

(3) Not discriminate against any motor carrier that conducts transactions at the marine terminal in scheduling appointments.

(4) Not interfere with a double transaction once inside the gate.

(5) Not turn away or fine a motor carrier if that motor carrier misses an appointment.

SEC. 2.5. Section 40720.5 is added to the Health and Safety Code, to read:

40720.5. (a) Subdivision (a) of Section 40720 does not apply to any marine terminal that implements, or begins to implement, a scheduling or appointment system for trucks to enter the marine terminal.

(b) Any marine terminal that implements, or begins to implement a scheduling or appointment system for trucks to enter the marine terminal shall notify the applicable district of that implementation as soon as practicable.

(c) This section shall become inoperative on July 1, 2003, and, as of January 1, 2004, is repealed, unless a later enacted statute that is enacted before January 1, 2004, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 3. Section 42407 of the Health and Safety Code is amended to read:

42407. Except as provided in Sections 40720 and 42403.5, this article is not applicable to vehicular sources.

SEC. 4. Chapter 9.8 (commencing with Section 44299.80) is added to Part 5 of Division 26 of the Health and Safety Code, to read:

CHAPTER 9.8. THE CALIFORNIA PORT COMMUNITY AIR QUALITY PROGRAM

44299.80. As used in this chapter, the following terms have the following meanings:

(a) ''Advanced introduction cost'' means the cost of a project less a baseline cost that would otherwise be incurred by the applicant in the normal course of business based on the actual age and turnover rates of trucks used at ports, and may include, but is not limited to, any of the following: incremental engine costs, re-engine or retrofit costs, additional operational costs, incremental fuel costs, facility modifications, and scrappage costs to eliminate operation on highways in the state.

(b) ''Cost-effectiveness'' means the funds provided to a project for each ton of particulate matter reduction attributed to a project or to the program as a whole. In calculating cost-effectiveness, a one-time grant of funds made at the beginning of a project shall be annualized using a time value of public funds or discount rate determined for each project. Cost-effectiveness shall be calculated by dividing annualized costs by local emissions reductions of PM.

(c) ''Covered engine'' includes an engine from any onroad heavy-duty diesel truck or bus weighing over 33,000 pounds and used in for-hire or proprietary trucking operated by a trucking company that services a port in the state.

(d) ''Covered source'' includes onroad heavy-duty diesel vehicles and other onroad high-emitting diesel engine categories.

(e) ''Covered vehicle'' includes any vehicle or piece of equipment powered by a covered engine.

(f) ''District'' means the Bay Area Air Quality Management District as described in Chapter 4 (commencing with Section 40200) of Part 3 and the South Coast Air Quality Management District as described in Chapter 5.5 (commencing with Section 40400) of Part 3.

(g) ''Fund'' means the California Port Community Air Quality Program Trust Fund established pursuant to Section 44299.84.

(h) ''Gr-bhph'' means grams-per brake horsepower hour.

(i) ''Marine terminal'' has the same meaning as in Section 40720.

(j) ''New very low-emission vehicle'' means a vehicle that qualifies as a very low-emission vehicle when it is a new vehicle, as defined in Section 430 of the Vehicle Code, with regard to particulate matter emissions standards or that is modified with the approval and warranty of the original equipment manufacturer to qualify as a very low-emission vehicle with regard to particulate matter emissions standards within 12 months of delivery to an owner for private or commercial use.

(k) ''Port'' means any sea or river port in the state.

(*l*) ''PM'' means particulate matter.

(m) ''Program'' means the California Port Community Air Quality Program created by this chapter.

(n) ''Project'' means the replacement, repowering, scrapping or retrofitting of a covered vehicle or covered engine that receives a grant pursuant to this chapter.

(o) ''Repower'' means replacing an engine with a different engine. The term ''repower'' as used in this chapter, refers to replacing an older, uncontrolled engine with a newer model engine that meets the latest emissions standards.

(p) ''Retrofit'' means making modifications to the engine and fuel system so that the retrofitted engine does not have the same emissions of particulate matter as the original engine.

(q) ''Very low-emission vehicle'' means a vehicle with emissions significantly lower than otherwise applicable baseline emission standards or uncontrolled emission levels.

44299.81. (a) The California Port Community Air Quality Program is hereby established in the Bay Area Air Quality Management District and the South Coast Air Quality Management District.

(b) The program shall be implemented and administered by a district within its jurisdiction. The district shall provide grants to offset the advanced introduction costs of eligible projects that reduce onroad emissions of particulate matter within communities adjacent to marine terminals.

(c) A district may use moneys derived from fines imposed within its jurisdiction pursuant to paragraphs (1) and (5) of subdivision (a) of Section 40720 to offset costs incurred performing the administration, enforcement, and monitoring activities as required pursuant to that section.

(d) A district shall use any moneys derived from fines imposed within its jurisdiction pursuant to paragraphs (1) and (5) of subdivision (a) of

Section 40720 that are not expended to offset costs pursuant to paragraph (c) to fund the grant program.

44299.82. (a) A district shall determine the projects eligible for grants within that district. Those projects may include, but are not limited to, any of the following:

(1) Purchase of a new very-low-emission covered vehicle or covered engine to replace an older heavy-duty diesel vehicle or engine.

(2) Purchase and use of PM emission-reducing add-on equipment for a covered vehicle.

(3) Implementation of a practical, low-emission retrofit technology, repower option, advanced technology, or low sulfur diesel or alternative fuel mixture for a covered engine.

(b) In determining eligible projects, the district shall consider whether the project will have the following effects:

(1) Reduce onroad PM emissions to the maximum extent feasible on a timely and cost-effective basis at the marine terminal or port and within the surrounding communities.

(2) Meet environmental justice goals and objectives set by the state and local air pollution control agencies, including, but not limited to, districts.

(3) Benefit small businesses, giving particular emphasis to independent minority owners and operators.

(4) Assist in meeting the 0.01 gr-bhph emission standards adopted by the federal Environmental Protection Agency for 2007 and later model year diesel heavy-duty engines and vehicles (40 C.F.R. Sec. 86.007-11).

(c) A person that owns a covered vehicle that operates near or in a marine terminal or port is eligible to apply for a project grant if the district with jurisdiction over that marine terminal or port determines that the covered vehicle contributes significantly to the PM emissions inventory in the communities adjacent to that marine terminal or port.

(d) Each district shall allocate grant funds in the following manner:

(1) Covered engines and covered vehicles that are manufactured prior to 1994 shall receive 50 percent of the funds to purchase pre-existing engines or vehicles that are certified by the state board to have been manufactured after 1993. If the replacement engine or vehicle is not equipped with a PM retrofit device verified by the state board, those funds shall be utilized to purchase a PM retrofit device that is verified by the state board and to offset incremental costs incurred during the first year of utilizing low-sulfur diesel fuel with not more than 15 parts per million sulfur. The total cost to offset the incremental costs may not exceed 10 percent of the cost of the retrofit control device.

(2) The remaining 50 percent of the funds shall be used to fund the purchase of engines or vehicles, including, but not limited to, engines that are certified to be cleaner than existing exhaust emission standards,

and the repower or retrofit of existing engines to meet the 0.01 gr-bhph PM emission standard. A new engine purchased pursuant to this section may operate on any fuel source if that fuel source is certified by the state board. If a new engine does not meet the 0.01 gr-bhph PM emission standards, a portion of these funds shall be utilized to purchase a PM retrofit device that is verified by the state board and to offset the incremental costs incurred during the first year of utilizing low-sulfur diesel fuel with not more than 15 parts per million sulfur to achieve the 0.01 gr-bhph PM emission standard. The total cost to offset the incremental costs shall not exceed 10 percent of the cost of the retrofit control device.

(e) A district shall give priority to those grant applicants that provide the greatest reduction in PM emissions.

(f) A district may give priority to any grant applicant who provides matching funds for the grant.

(g) A district may provide a grant to a project that involves replacing an engine that was manufactured before 1988, only if the applicant delivers that engine to the district or its agent for scrappage. The grant award amount shall include the costs the district will incur in scrapping that engine.

(h) A district may provide a grant for a project involving PM control retrofit technology only if that technology has been determined to be eligible for use by the state board.

(i) In determining eligible projects, a district may not exclude any technology based on the type of fuel utilized by that technology.

44299.83. (a) Notwithstanding paragraph (4) of subdivision (b) of Section 44299.82, a district may, on a case by case basis, determine that a project that meets a PM standard that is less stringent than 0.01 gr-bhph, but does not exceed 0.1 gr-bhph, is eligible for funding if it meets all of the following conditions:

(1) The project is proposed, pursuant to paragraph (1) of subdivision (d) of Section 44299.82 to reduce emissions from engines manufactured before 1994.

(2) The district has determined that the applicant's cost of meeting a 0.01 gr-bhph standard will exceed thirty-seven thousand five hundred dollars ($37,500).

(3) The district has evaluated the emission reductions that can be achieved by the applicant through available purchase and retrofit options and the costs of these options prior to making the determination.

(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.

44299.85. (a) A district may include any reduction in PM emissions that result from the implementation of the program in any

state implementation plan, or revision of that plan, that is submitted to the state board pursuant to Chapter 10 (commencing with Section 40910) of Part 3 for a particulate matter nonattainment area.

(b) All emission reductions or reduction credits resulting from a project funded by a district pursuant to this chapter are the property of the district that approved the grant. The district may utilize those emission reductions or reduction credits first to fulfill local and regional commitments to air quality standards. Any additional reductions or credits that exist after the local or regional commitment to air quality is fulfilled may be used by the state board to fulfill the state's commitment to air quality standards and attainment.

SEC. 5. The Legislature finds and declares that, due to the unique circumstances relating to air quality in the communities surrounding ports in the Bay Area Air Quality Management District and the South Coast Air Quality Management District, a statute of general applicability cannot be enacted within the meaning of subdivision (b) of Section 16 of Article IV of the California Constitution.

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

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

CHAPTER 1130

An act to amend Sections 1, 2, 5, and 6 of Chapter 651 of the Statutes of 1929, relating to tidelands and submerged lands of the City of Los Angeles.

[Approved by Governor September 30, 2002. Filed with Secretary of State September 30, 2002.]

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

SECTION 1. Section 1 of Chapter 651 of the Statutes of 1929, as amended by Section 1 of Chapter 926 of the Statutes of 1979, is amended to read:

Sec. 1. There is hereby granted to the City of Los Angeles, hereinafter called ''city,'' a municipal corporation of the State of California, and to its successors, all the right, title and interest of the State of California, held by the state by virtue of its sovereignty, in and to all tidelands and submerged lands, whether filled or unfilled, situated below the line of mean high tide of the Pacific Ocean, within the present boundaries of the city, or of any harbor, estuary, bay or inlet within those boundaries, except as hereinafter provided, to be forever held by the city, and by its successors, in trust for the following uses and purposes, and upon the following conditions:

(a) The lands shall be held by the city, and by its successors, in accordance with the applicable provisions of this act, for purposes in connection with, or for the promotion and accommodation of, commerce, navigation, and fishery, and for those purposes specified in Section 3 of this act.

(b) Except as otherwise provided in this act, the city, or its successors, shall not grant, convey, give or alien the lands, or any part thereof, to any individual firm or corporation for any purpose whatsoever; provided that the city, or its successors, may grant franchises and permits thereon for limited periods, but not to exceed 50 years, for purposes in connection with, or for the promotion and accommodation of, commerce, navigation, fishery, and for any purpose specified in Section 3 of this act, and may lease the lands, or any part thereof for limited periods, but not to exceed 50 years, for any and all purposes which shall not interfere with the trusts upon which the lands are held by the State of California.

(c) The tide and submerged lands shall be improved by the city without expense to the state, and any harbor constructed thereon shall always remain a public harbor for all purposes of commerce and navigation, and the State of California shall have, at all times, the right to use, without charge, all wharves, docks, piers, slips, quays, and other improvements constructed by the city on the lands, or any part thereof, for any vessel or other watercraft, or railroad, owned or operated by the State Of California.

(d) In the management, conduct or operation of any such harbor, or of any of the utilities, structures or appliances constructed in connection therewith, no discrimination in rates, tolls, or charges, or in facilities, for any use or service in connection therewith shall ever be made, authorized, or permitted by the city, or by its successors.

There is reserved in the people of the State of California the absolute right to fish in the waters, with the right of convenient access to the waters over the lands for those purposes. The grant herein made shall not include those tidelands or submerged lands within those certain areas known as the Westgate addition acquired by the City of Los Angeles by annexation on June 14, 1916, or the Santa Monica canyon addition acquired by the City of Los Angeles by annexation on April 28, 1925, or the Venice addition acquired by the City of Los Angeles by consolidation on November 25, 1925.

SEC. 2. Section 2 of Chapter 651 of the Statutes of 1929, as added by Chapter 1046 of the Statutes of 1970, is amended to read:

Sec. 2. The city shall establish a separate tidelands trust fund or funds in such manner as may be approved by the Department of Finance and the city shall deposit in the fund or funds all moneys received directly from, or indirectly attributable to, the granted tidelands in the city, other than those portions of the tidelands described in Section 651 of Article VI of the Charter of the City of Los Angeles. An annual statement of financial condition and operations, to conform with such requirements as the Department of Finance may prescribe, shall be submitted to the Department of Finance each year by the city on or before September 30th of each year for the preceding fiscal year.

SEC. 3. Section 5 of Chapter 651 of the Statutes of 1929, as added by Chapter 1046 of the Statutes of 1970, is amended to read:

Sec. 5. As to the accumulation and expenditure of revenues for any single capital improvement on the granted lands, other than those portions of the tidelands described in Section 651 of Article VI of the Charter of the City of Los Angeles, 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 the capital improvement not less than 90 days prior to the time of any disbursement therefor or in connection therewith, excepting preliminary planning. The State Lands Commission may, within 90 days after the time of filing, determine and notify the city that the capital improvement is not in the statewide interest and benefit or is not authorized by Section 3 of this act. The State Lands Commission may request the opinion of the Attorney General on the matter, and if it does so, a copy of that 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 may 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 may bring suit against the state for the purpose of securing that order or adjudication, which suit shall have priority over all other civil matters. Service 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 the suit. If the judgment is against the state in the suit, no costs shall be recovered against it.

SEC. 4. Section 6 of Chapter 651 of the Statutes of 1929, as added by Chapter 1046 of the Statutes of 1970, is amended to read:

Sec. 6. At the end of every third fiscal year, beginning June 30, 1972, that portion of the city tideland trust revenues derived from the granted tidelands, other than those portions described in Section 651 of Article VI of the Charter of the City of Los Angeles, in excess of two hundred fifty thousand dollars ($250,000) remaining after current and accrued operating costs and expenditures directly related to the operation or maintenance of tideland trust activities have been made, shall be deemed excess revenue; provided that 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 may be considered as expenditures for the purpose of determining net revenues; provided, however, that if made after January 1, 1971, they may be so considered only if made in accordance with Section 5 of this act.

The excess revenue, as determined pursuant to Section 5 of this act shall be divided as follows: 85 percent to the General Fund in the State Treasury, and 15 percent to the city to be deposited in the trust fund and used for any purpose authorized by Section 3 of this act.

CHAPTER 1131

An act to add Article 9.5 (commencing with Section 1970) to Chapter 4 of, to add Article 7.5 (commencing with Section 2153.5) and Article 7.7 (commencing with Section 2154) to Chapter 5 of, and to repeal Article 7.5 (commencing with Section 2154) of Chapter 5 of, Division 2 of the Business and Professions Code, and to add Section 128224 to, and to add Article 2.5 (commencing with Section 127925) to Chapter 2 of Part 3 of Division 107 of the Health and Safety Code, relating to health care, and making an appropriation therefor.

[Approved by Governor September 30, 2002. Filed with Secretary of State September 30, 2002.]

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

SECTION 1. This act shall be known as the Community Healthcare Service Expansion Act.

SEC. 2. The Legislature finds and declares all of the following:

(a) According to the 2000 Census and its Supplementary Survey, communities of color represent a majority, 53 percent, of the state's population. In addition, almost 40 percent of Californians speak a language other than English at home.

(b) According to the Institute of Medicine Report entitled ''Unequal Treatment,'' to improve the health care of diverse populations and to eliminate health disparities, culturally and linguistically appropriate services are critical. For example, the provision of language assistance services results in improved quality of health care, increased access to health services, reduced medical errors, and greater provider-patient trust and satisfaction for limited-English proficient populations.

(c) The Department of Health and Human Services Office of Minority Health published standards for culturally and linguistically appropriate services (CLAS) on December 22, 2000. These CLAS standards outlined requirements, guidelines and recommendations on how health care organizations can make their practices more culturally and linguistically accessible, with the ultimate goal of eliminating racial and ethnic health disparities.

(d) According to the Bureau of Health Professions, the cost of receiving medical and dental education and training results in many new physicians and dentists being unable to afford to work in underserved communities, including those that face cultural and linguistic barriers to care, because of the need to repay student loans.

(e) According to the Center for California Health Workforce Studies, despite some existing programs to repay student loans for physicians who commit to work in underserved areas, there are still inadequate numbers of physicians that are culturally or linguistically competent to serve these areas. The same holds true for dentists, for whom few subsidized loan repayment programs or options exist.

(f) It is in the interest of the state and its residents that medical and dental services be provided throughout California in a manner that can be effectively accessed by the residents of all communities.

SEC. 3. Article 9.5 (commencing with Section 1970) is added to Chapter 4 of Division 2 of the Business and Professions Code, to read:

Article 9.5. California Dental Corps Loan Repayment Program

1970. There is hereby established in the Dental Board of California the Dental Corps Loan Repayment Program of 2002, which shall

become operative on January 1, 2003. This program shall be known and may be cited as the California Dental Corps Loan Repayment Program of 2002.

1970.5. It is the intent of the this article that the Dental Board of California, in consultation with the Office of Statewide Health Planning and Development, the dental community, including ethnic representatives, dental schools, health advocates representing ethnic communities, primary care clinics, public hospitals and health systems, statewide agencies administering state and federally funded programs targeting underserved communities, and members of the public with health care issue-area expertise shall develop and implement the California Dental Corps Loan Repayment Program of 2002.

1971. For the purposes of this article, the following terms have the following meanings:

(a) ''Board'' means the Dental Board of California.

(b) ''Office'' means the Office of Statewide Health Planning and Development.

(c) ''Program'' means the California Dental Corps Loan Repayment Program.

(d) ''Dentally underserved area'' means a geographic area eligible to be designated as having a shortage of dental professionals pursuant to Part I of Appendix B to Part 5 of Chapter 1 of Title 42 of the Code of Federal Regulations or an area of the state where unmet priority needs for dentists exist as determined by the Health Manpower Policy Commission pursuant to Section 128224 of the Health and Safety Code.

(e) ''Dentally underserved population'' means persons without dental insurance and persons eligible for the Denti-Cal and Healthy Families Programs who are population groups described as having a shortage of dental care professionals in Part I of Appendix B to Part 5 of Chapter 1 of Title 42 of the Code of Federal Regulations.

(f) ''Practice setting'' means:

(1) A community clinic, as defined in subdivision (a) of Section 1204 and subdivision (c) of Section 1206 of the Health and Safety Code, a clinic owned or operated by a public hospital and health system, or a clinic owned and operated by a hospital that maintains the primary contract with a county government to fulfill the county's role pursuant to Section 17000 of the Welfare and Institutions Code, which is located in a dentally underserved area and at least 50 percent of whose patients are from a dentally underserved population; or

(2) A dental practice or dental corporation, as defined in Section 1800 of this code, located in a dentally underserved area and at least 50 percent of whose patients are from a dentally underserved population.

(g) ''Medi-Cal threshold languages'' means primary languages spoken by limited-English proficient (LEP) population groups meeting

a numeric threshold of 3,000, eligible LEP Medi-Cal beneficiaries residing in a county, 1,000 Medi-Cal eligible LEP beneficiaries residing in a single ZIP Code, or 1,500 LEP Medi-Cal beneficiaries residing in two contiguous ZIP Codes.

(h) ''Fund'' means the Community Healthcare Service Expansion Fund.

(i) ''Account'' means the Dentally Underserved Account which is contained within the fund.

1972. (a) Program applicants shall possess a current valid license to practice dentistry in this state issued by the board pursuant to Section 1626.

(b) The board, in accordance with Section 1970.5, shall develop the guidelines for selection and placement of applicants.

(1) Guidelines shall provide priority consideration to applicants who are best suited to meet the cultural and linguistic needs and demands of dentally underserved populations and that meet one or more of the following criteria:

(A) Speak a Medi-Cal threshold language.

(B) Come from an economically disadvantaged background.

(C) Have received significant training in cultural and linguistically appropriate service delivery.

(D) Have worked with dentally underserved communities for at least three years.

(E) Recently received a license to practice dentistry.

(2) The guidelines shall include a process for determining the needs for dentist services identified by the practice setting. At a minimum, the practice setting shall meet the following criteria:

(A) The practice setting shall be located in a dentally underserved area.

(B) The practice setting shall ensure that the program participant serves a patient population that consists of at least 50 percent dentally underserved populations.

(3) Guidelines shall seek to place the most qualified applicants under this section in the areas with the greatest need.

(4) Guidelines shall include a factor ensuring geographic distribution of placements.

(c) Program applicants shall be working in or have a signed agreement with an eligible practice setting. The program participant shall have full-time status. Full-time status shall be defined by the board, and the board may establish exemptions to this requirement on a case-by-case basis.

(d) Program participants shall commit to a minimum of three years of service in a dentally underserved area. The board, in accordance with Section 1970.5, shall develop the process for determining the maximum

length of an absence and the process for reinstatement. Loan repayment shall be deferred until the dentist is back to full-time status.

(e) The board, in accordance with Section 1970.5, shall develop the process if a dentist is not able to complete his or her three-year obligation.

(f) The board, in accordance with Section 1970.5, shall develop a process for outreach to potentially eligible applicants.

(g) The board may adopt any other standards of eligibility, placement and termination appropriate to achieve the aim of providing competent dental services in these approved practice settings.

1973. (a) The Dentally Underserved Account is hereby created in the State Dentistry Fund.

(b) The sum of three million dollars ($3,000,000) is hereby authorized to be expended from the State Dentistry Fund on this program. These moneys are appropriated as follows:

(1) One million dollars ($1,000,000) shall be transferred from the State Dentistry Fund to the Dentally Underserved Account on July 1, 2003. Of this amount, sixty-five thousand dollars ($65,000) shall be used by the Dental Board of California in the 2003–04 fiscal year for operating expenses necessary to manage this program.

(2) One million dollars ($1,000,000) shall be transferred from the State Dentistry Fund to the Dentally Underserved Account on July 1, 2004. Of this amount, sixty-five thousand dollars ($65,000) shall be used by the Dental Board of California in the 2004–05 fiscal year for operating expenses necessary to manage this program.

(3) One million dollars ($1,000,000) shall be transferred from the State Dentistry Fund to the Dentally Underserved Account on July 1, 2005. Of this amount, sixty-five thousand dollars ($65,000) shall be used by the Dental Board of California in the 2005–06 fiscal year for operating expenses necessary to manage this program.

(c) Funds placed into the Dentally Underserved Account shall be used by the board to repay the loans per agreements made with dentists.

(1) Funds paid out for loan repayment may have a funding match from foundation or other private sources.

(2) Loan repayments shall not exceed one hundred five thousand dollars ($105,000) per individual licensed dentist.

(3) Loan repayments shall not exceed the amount of the educational loans incurred by the dentist applicant.

(d) Notwithstanding Section 11005 of the Government Code, the board may seek and receive matching funds from foundations and private sources to be placed into the Dentally Underserved Account. The board also may contract with an exempt foundation for the receipt of matching funds to be transferred to the Dentally Underserved Account for use by this program.

1975. The terms of loan repayment granted under this article shall be as follows:

(a) After a program participant has completed one year of providing services as a dentist in a dentally underserved area, the board shall provide up to twenty-five thousand dollars ($25,000) for loan repayment.

(b) After a program participant has completed two consecutive years of providing services as a dentist in a dentally underserved area, the board shall provide up to an additional thirty-five thousand dollars ($35,000) of loan repayment, for a total loan repayment of up to sixty thousand dollars ($60,000).

(c) After a program participant has completed three consecutive years of providing services as a dentist in a dentally underserved area, the board shall provide up to a maximum of an additional forty-five thousand dollars ($45,000) of loan repayment, for a total loan repayment of up to one hundred five thousand dollars ($105,000).

1976. (a) On January 1, 2003, applications from dentists for program participation may be submitted.

(b) The board shall report to the Legislature, no later than October 1, 2004, the experience of the program since its inception, an evaluation of its effectiveness in improving access to dental care for underserved populations, and recommendations for maintaining or expanding its operation. The report to the Legislature shall also include the following:

(1) The number of the program participants.

(2) The practice locations.

(3) The amount expended for the program.

(4) The information on annual performance reviews by practice settings and program participants.

(c) The board may promulgate emergency regulations to implement the program.

SEC. 4. Article 7.5 (commencing with Section 2154) of Chapter 5 of Division 2 of the Business and Professions Code is repealed.

SEC. 5. Article 7.5 (commencing with Section 2153.5) is added to Chapter 5 of Division 2 of the Business and Professions Code, to read:

Article 7.5. Osteopathic Reciprocity Applications

2153.5. Notwithstanding any other provisions of law, the Osteopathic Medical Board of California shall issue an osteopathic physician's and surgeon's certificate on reciprocity to an applicant providing he or she meets the following requirements:

(a) The applicant holds an unlimited license to engage in the practice of osteopathic medicine in another state whose written licensing examination is recognized and approved by the board to be equivalent

in content to that administered in California. For the purposes of this section, the board may recognize and approve as equivalent, along with other examinations, an examination prepared by the Federation of State Medical Boards if an applicant had been licensed in another state as a result of the successful completion, prior to December 31, 1993, of that examination. In lieu of a board recognized and approved state written license examination, the board may require the applicant to successfully complete a special examination in general medicine and osteopathic principles prepared by the National Board of Osteopathic Medical Examiners, or the Osteopathic Medical Board of California. The board may also utilize a special purpose examination prepared by the Federation of State Medical Boards.

(b) The board determines that no disciplinary action has been taken against the applicant by any medical licensing authority and that the applicant has not been the subject of adverse judgments or settlements resulting from the practice of medicine which the board determines constitutes evidence of a pattern of negligence or incompetence.

(c) The applicant successfully completes an oral, clinical, and practical examination, as determined by the board.

SEC. 6. Article 7.7 (commencing with Section 2154) is added to Chapter 5 of Division 2 of the Business and Professions Code, to read:

Article 7.7. California Physician Corps Loan Repayment Program

2154. There is hereby established in the Division of Licensing of the Medical Board of California, the California Physician Corps Loan Repayment Program of 2002, which shall become operative on January 1, 2003. This program shall be known and may be cited as the California Physician Corps Loan Repayment Program of 2002.

2154.1. It is the intent of this article that the Division of Licensing, in consultation with the Office of Statewide Health Planning and Development, the medical community, including ethnic representatives, medical schools, health advocates representing ethnic communities, primary care clinics, public hospitals and health systems, statewide agencies administering state and federally funded programs targeting underserved communities, and members of the public with health care issue-area expertise shall develop and implement the California Physician Corps Loan Repayment Program of 2002.

2154.2. For the purposes of this article, the following terms have the following meanings:

(a) ''Division'' means the Division of Licensing.

(b) ''Office'' means the Office of Statewide Health Planning and Development (OSHPD).

(c) ''Program'' means the California Physician Corps Loan Repayment Program.

(d) ''Medically underserved area'' means an area as defined in Part 5 of Chapter 1 of Title 42 of the Code of Federal Regulations or an area of the state where unmet priority needs for physicians exist as determined by the Health Manpower Policy Commission pursuant to Section 128225 of the Health and Safety Code.

(e) ''Medically underserved population'' means the Medi-Cal, Healthy Families, and uninsured populations.

(f) ''Practice setting'' means:

(1) A community clinic as defined in subdivision (a) of Section 1204 and subdivision (c) of Section 1206 of the Health and Safety Code, a clinic owned or operated by a public hospital and health system, or a clinic owned and operated by a hospital that maintains the primary contract with a county government to fulfill the county's role pursuant to Section 17000 of the Welfare and Institutions Code, which is located in a medically underserved area and at least 50 percent of whose patients are from a medically underserved population.

(2) A medical practice located in a medically underserved area and at least 50 percent of whose patients are from a medically underserved population.

(g) ''Primary specialty'' means family practice, internal medicine, pediatrics, or obstetrics/gynecology.

(h) ''Medi-Cal threshold languages'' means primary languages spoken by limited-English proficient (LEP) population groups meeting a numeric threshold of 3,000, eligible LEP Medi-Cal beneficiaries residing in a county, 1,000 Medi-Cal eligible LEP beneficiaries residing in a single ZIP Code, or 1,500 LEP Medi-Cal beneficiaries residing in two contiguous ZIP Codes.

(i) ''Fund'' means the Community Healthcare Services Expansion Fund.

(j) ''Account'' means the Medically Underserved Account which is contained within the fund.

2154.3. (a) Program applicants shall possess a current valid license to practice medicine in this state issued by the board pursuant to Section 2050.

(b) The division, in accordance with Section 2154.1, shall develop the guidelines for selection and placement of applicants.

(1) Guidelines shall provide priority consideration to applicants that are best suited to meet the cultural and linguistic needs and demands of patients from medically underserved populations and shall meet one or more of the following criteria:

(A) Speak a Medi-Cal threshold language.

(B) Come from an economically disadvantaged background.

(C) Have received significant training in cultural and linguistically appropriate service delivery.

(D) Have three years of experience working in medically underserved areas or with medically underserved populations.

(E) Have recently obtained their license to practice medicine.

(2) The guidelines shall include a process for determining the needs for physician services identified by the practice setting. At a minimum, the practice setting shall meet the following criteria:

(A) The practice setting shall be located in a medically underserved area.

(B) The practice setting shall ensure that the program participant serves a patient population that consists of at least 50 percent medically underserved populations.

(3) The guidelines shall give preference to applicants who have completed a three-year residency in a primary specialty.

(4) Guidelines shall seek to place the most qualified applicants under this section in the areas with the greatest need.

(5) Guidelines shall include a factor ensuring geographic distribution of placements.

(c) The division may fill up to 20 percent of the available positions with program applicants from specialties outside of the primary care specialties.

(d) Program applicants shall be working in or have a signed agreement with an eligible practice setting. The program participant shall have full-time status. Full-time status shall be defined by the division and the division may establish exemptions to this requirement on a case-by-case basis.

(e) Program participants shall commit to a minimum of three years of service in a medically underserved area. Leaves of absences will be permitted for serious illnesses, pregnancy, or other natural causes. The division, in accordance with Section 2154.1, shall develop the process for determining the maximum permissible length of an absence and the process for reinstatement. Loan repayment shall be deferred until the physician is back to full-time status.

(f) The division, in accordance with Section 2154.1, shall develop the process should a physician be unable to complete his or her three-year obligation.

(g) The division, in accordance with Section 2154.1, shall develop a process for outreach to potentially eligible applicants.

(h) The division may adopt any other standards of eligibility, placement, and termination appropriate to achieve the aim of providing competent health care services in these approved practice settings.

2154.4. (a) The Medically Underserved Account is hereby created in the Contingent Fund of the Medical Board of California.

(b) The sum of three million four hundred fifty thousand dollars ($3,450,000) is hereby authorized to be expended from the Contingent Fund of the Medical Board of California on this program. These moneys are appropriated as follows:

(1) One million one hundred fifty thousand dollars ($1,150,000) shall be transferred from the Contingent Fund of the Medical Board of California to the Medically Underserved Account on July 1, 2003. Of this amount, one hundred fifty thousand dollars ($150,000) shall be used by the Medical Board of California in the 2003–04 fiscal year for operating expenses necessary to manage this program.

(2) One million one hundred fifty thousand dollars ($1,150,000) shall be transferred from the Contingent Fund of the Medical Board of California to the Medically Underserved Account on July 1, 2004. Of this amount, one hundred fifty thousand dollars ($150,000) shall be used by the Medical Board of California in the 2004–05 fiscal year for operating expenses necessary to manage this program.

(3) One million one hundred fifty thousand dollars ($1,150,000) shall be transferred from the Contingent Fund of the Medical Board of California to the Medically Underserved Account on July 1, 2005. Of this amount, one hundred fifty thousand dollars ($150,000) shall be used by the Medical Board of California in the 2005–06 fiscal year for operating expenses necessary to manage this program.

(c) Funds placed into the Medically Underserved Account shall be used by the board to repay the loans per agreements made with physicians.

(1) Funds paid out for loan repayment may have a funding match from foundation or other private sources.

(2) Loan repayments shall not exceed one hundred five thousand dollars ($105,000) per individual licensed physician.

(3) Loan repayments shall not exceed the amount of the educational loans incurred by the physician applicant.

(d) Notwithstanding Section 11005 of the Government Code, the board may seek and receive matching funds from foundations and private sources to be placed into the Medically Underserved Account. The board also may contract with an exempt foundation for the receipt of matching funds to be transferred to the Medically Underserved Account for use by this program.

2154.5. The terms of loan repayment granted under this article shall be as follows:

(a) After a program participant has completed one year of providing services as a physician in a medically underserved area, the division shall provide up to twenty-five thousand dollars ($25,000) for loan repayment.

(b) After a program participant has completed two consecutive years of providing services as a physician in a medically underserved area, the division shall provide up to an additional thirty-five thousand dollars ($35,000) of loan repayment, for a total loan repayment of up to sixty thousand dollars ($60,000).

(c) After a program participant has completed three consecutive years of providing services as a physician in a medically underserved area, the division shall provide up to a maximum of an additional forty-five thousand dollars ($45,000) of loan repayment, for a total loan repayment of up to one hundred five thousand dollars ($105,000).

2154.6. Pursuant to Section 2313, the division shall also include the following in its annual report:

(a) Number of the program participants.

(b) Practice locations.

(c) Amount expended for the program.

(d) Information on annual performance reviews by the practice settings and program participants.

2154.7. (a) On January 1, 2003, applications from physicians for program participation may be submitted.

(b) The division shall report to the Legislature, no later than October 1, 2004, the experience of the program since the inception, an evaluation of its effectiveness in improving access to health care for underserved populations, and recommendations for maintaining or expanding its operation.

(c) The division may promulgate emergency regulations to implement the program.

SEC. 7. The Legislature finds and declares all of the following:

(a) According to the Physician Shortage Area Survey conducted by the Medical Student Section of the California Medical Association, an overwhelming number of California preclinical medical students plan to complete their residency training in California and eventually practice in California. Over half of clinical medical students in their final years of medical school similarly plan to complete their residency training in California in hopes of practicing in the state and a significant number of medical students plan to practice in an underserved community at any salary. Many California dental students plan to practice in California upon graduation and more would do so if loan forgiveness or repayment financial incentives existed to offset the higher cost of living in California.

(b) According to the Physician Shortage Area Survey conducted by the Medical Student Section of the California Medical Association, in response to linguistic barriers in underserved communities a significant number of California medical and dental students will be able to communicate in Spanish in a clinical environment before entering

practice. In addition, California medical and dental students speak over 40 different languages, ranging from Arabic to Tagalog.

SEC. 8. Article 2.5 (commencing with Section 127925) is added to Chapter 2 of Part 3 of Division 107 of the Health and Safety Code, to read:

Article 2.5. California Medical and Dental Student Loan Repayment Program

127925. This article shall be known and may be cited as the California Medical and Dental Student Loan Repayment Program of 2002.

127926. It is the intent of this article that the Office of Statewide Health Planning and Development, in consultation with the Dental Board of California, the Medical Board of California, the medical and dental community, including ethnic representatives, medical and dental schools, health advocates representing ethnic communities, primary care clinics, public hospitals and health systems, statewide agencies administering state and federally funded programs targeting underserved communities, and members of the public with health care issue area expertise shall develop and implement the California Medical and Dental Student Loan Repayment Program of 2002.

127927. (a) There is hereby established in the Office of Statewide Health Planning and Development the California Medical and Dental Student Loan Repayment Program of 2002.

(b) The Office of Statewide Health Planning and Development shall operate the California Medical and Dental Student Loan Repayment Program of 2002 in accordance with, but not limited to, the following:

(1) Increased efforts in educating medical and dental students and medical residents of the need for physicians and dentists in underserved communities, and of programs that are available that provide incentives, financial and otherwise, to practice in settings and areas in need.

(2) Strategic collaboration with California medical and dental schools and postgraduate programs to better prepare physicians and dentists to meet the distinctive cultural and medical needs of underserved populations.

(3) Encourage the University of California and other medical and dental schools to increase the number of medical and dental students and medical residency program positions.

(4) Establish, encourage, and expand programs for medical and dental students and medical residents for mentoring at primary and secondary schools, and college levels to increase the number of students entering the medical and dental sciences.

(5) Administer financial or other incentives to encourage new or experienced physicians and dentists to practice in underserved areas.

127928. For purposes of this part, the following terms have the following meanings:

(a) ''Program'' means the California Medical and Dental Student Loan Repayment Program of 2002.

(b) (1) ''Medically underserved area'' means an area as defined in Part 5 of Chapter 1 of Title 42 of the Code of Federal Regulations or an area of the state where unmet priority needs for physicians exists as determined by the Health Manpower Policy Commission pursuant to Section 128225 of the Health and Safety Code.

(2) ''Dentally underserved area'' means a geographic area eligible to be designated as having a shortage of dental professionals pursuant to Part I of Appendix B to Part 5 of Chapter 1 of Title 42 of the Code of Federal Regulations or an area of the state where unmet priority needs for dentists exist as determined by the Health Manpower Policy Commission pursuant to Section 128224 of the Health and Safety Code.

(c) (1) ''Medically underserved population'' means the Medi-Cal, Healthy Families and uninsured population.

(2) ''Dentally underserved population'' means persons without dental insurance and persons eligible for the Denti-Cal and Healthy Families Programs who are population groups described as having a shortage of dental care professionals in Part I of Appendix B to Part 5 of Chapter 1 of Title 42 of the Code of Federal Regulations.

(d) ''Medi-Cal threshold languages'' means primary languages spoken by limited-English proficient (LEP) population groups meeting a numeric threshold of 3,000 eligible LEP Medi-Cal beneficiaries residing in a county, 1,000 Medi-Cal eligible LEP beneficiaries residing in a single ZIP Code, or 1,500 LEP Medi-Cal beneficiaries residing in two contiguous ZIP Codes.

(e) ''Office'' means the Office of Statewide Health Planning and Development.

127929. (a) The office shall administer the California Medical and Dental Student Loan Repayment Program of 2002. Any individual enrolled in an institution of postsecondary education participating in the program set forth in this article may be eligible to receive a conditional warrant for loan repayment, to be redeemed upon becoming employed as a physician or dentist in a medically underserved area or a dentally underserved area serving primarily medically or dentally underserved populations. In order to be eligible to receive a conditional loan repayment warrant, an applicant shall satisfy all of the following conditions:

(1) The applicant has been judged by his or her postsecondary institution to have outstanding ability on the basis of criteria that may include, but not be limited to, any of the following:

(A) Grade point average.

(B) Test scores.

(C) Faculty evaluations.

(D) Interviews.

(E) Other recommendations.

(2) In order to meet the costs associated with obtaining a medical or dental degree, the applicant has received, or is approved to receive, a loan under one or more of the following designated loan programs:

(A) The Federal Family Education Loan Program (10 U.S.C. Sec. 1071 et seq.).

(B) Any loan program approved by the Student Aid Commission.

(3) The applicant has agreed to provide services as a licensed physician for up to three consecutive years, after obtaining a license from the Medical Board of California in a medically underserved area, or the applicant has agreed to provide services as a licensed dentist for up to three consecutive years, after obtaining a license from the Dental Board of California in a dentally underserved area.

(4) The applicant has agreed to work in a setting where the applicant will primarily serve medically or dentally underserved populations.

(b) The office shall ensure that priority consideration be given to applicants who are best suited to meet the cultural and linguistic needs and demands of medically and dentally underserved populations and who meet one or more of the following criteria:

(1) Speak a Medi-Cal threshold language.

(2) Come from an economically disadvantaged background.

(3) Have received significant training in cultural and linguistically appropriate service delivery.

(4) Have done a medical rotation serving medically underserved populations or provided dental services to members of a dentally underserved population.

(c) A person participating in the program pursuant to this section shall not receive more than one warrant.

(d) The office shall adopt rules and regulations regarding the reallocation of warrants if a participating institution is unable to utilize its allocated warrants or is unable to distribute them within a reasonable time period.

127930. The office, in accordance with Section 127926, shall develop the process to redeem an applicant's warrant and commence loan repayment.

127931. (a) The office shall distribute student applications to participate in the program to postsecondary institutions eligible to

participate in the state and federal financial aid programs and that have a program of professional preparation that has been approved by the Medical Board of California or the Dental Board of California. Each eligible institution shall receive at least one application.

(b) Each participating institution shall sign an institutional agreement with the office, certifying its intent to administer the program according to all applicable published rules, regulations, and guidelines, and shall make special efforts to notify students regarding the availability of the program, particularly to economically disadvantaged students.

(c) To the extent feasible, the office and each participating institution shall coordinate this program with other existing programs designed to recruit or encourage students to enter the medical and dental professions. These programs shall include, but not be limited to, the following:

(1) The Song-Brown Family Physician Training Act.

(2) The Health Education and Academic Loan Act.

(3) The National Health Service Corp.

127932. (a) The office, in accordance with Section 127926, shall administer this program, and shall adopt rules and regulations for that purpose. The rules and regulations shall include, but not be limited to, provisions regarding the period of time for which a warrant shall remain valid, the reallocation of warrants that are not utilized, and the development of projections for funding purposes.

(b) The office shall work in conjunction with lenders participating in federal or similar loan programs to develop a streamlined application process for participation in the program set forth in this article.

127933. (a) The office shall establish a fund to utilize for the purposes of this article.

(b) The office may seek matching funds from foundations and private sources. The office may also contract with an exempt foundation for the receipt of matching funds to be transferred to the fund for use by this program.

(c) The provisions of this article shall not become operative unless appropriate funding, as determined by the office, is made available.

SEC. 9. Section 128224 is added to the Health and Safety Code, to read:

128224. The commission shall identify specific areas of the state where unmet priority needs for dentists and physicians exist.

CHAPTER 1132

An act to amend Section 19134 of the Government Code, relating to public contracts.

[Approved by Governor September 30, 2002. Filed with
Secretary of State September 30, 2002.]

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

SECTION 1. Section 19134 of the Government Code is amended to read:

19134. (a) Personal services contracts entered into by a state agency in accordance with Section 19130 for persons providing janitorial and housekeeping services, custodians, food service workers, laundry workers, window cleaners, and security guard services shall include provisions for employee wages and benefits that are valued at least 85 percent of the state employer cost of wages and benefits provided to state employees for performing similar duties.

(b) For purposes of this section, ''benefits'' includes ''health, dental, retirement, and vision benefits, and holiday, sick, and vacation pay.''

(c) (1) The Department of Personnel Administration shall establish annually the state employer wage and benefit costs for workers covered pursuant to this section.

(2) Benefit costs shall be established using rates based on single employee, employee plus one dependent, and employee plus two or more dependents, or the costs may be based on a blended rate, subject to the determination of the Department of Personnel Administration.

(d) In lieu of providing actual benefits, contractors may comply with this section by a cash payment to employees equal to the applicable determination under subdivision (c).

(e) Failure to provide benefits or cash-in-lieu to employees as required under this section shall be deemed to be a material breach for any contract for personal services covered by this section.

(f) The Department of General Services and the Department of Personnel Administration may adopt guidelines and regulations to implement the requirements of this section.

(g) This section applies to all contracts exceeding 90 days.

(h) Holiday pay shall be provided to employees of contractors providing services specified in subdivision (a) on any state holiday that the state facility in which the services are being provided is closed.

(i) This section shall also apply to wages and benefits of employees of subcontractors providing services specified in subdivision (a) in state-leased facilities where the facility is at least 50,000 square feet in area and the state leases all of the occupied floorspace of the facility.

SEC. 2. This act shall apply only to personal services contracts and lease subcontracts subject to Section 19134 of the Government Code entered into, renewed, or extended on or after July 1, 2003.

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CHAPTER 1133

An act to amend Sections 20022, 20063, 20370, and 20383 of, to add Sections 20062.5, 20840, 20841, and 20842 to, and to repeal Sections 20225.5 and 20815.5 of, the Government Code, relating to public employees' retirement.

[Approved by Governor September 30, 2002. Filed with Secretary of State September 30, 2002.]

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

SECTION 1. Section 20022 of the Government Code is amended to read:

20022. ''Contracting agency'' means any public agency that has elected to have all or any part of its employees become members of this system and that has contracted with the board for that purpose. ''Contracting agency'' also means any county office of education, school district, or community college district that has elected to have all or part of its employees participate in a risk pool and that has contracted with the board for that purpose.

SEC. 2. Section 20062.5 is added to the Government Code, to read:

20062.5. ''Risk pool'' means the combination of assets and liabilities with respect to one or more contracting agencies for the purpose of pooling actuarial experience and setting the employer contribution rates pursuant to Section 20840.

SEC. 3. Section 20063 of the Government Code is amended to read:

20063. (a) ''School employer'' means a county superintendent of schools, other than the Los Angeles County Superintendent of Schools and the San Diego County Superintendent of Schools, that has entered into a contract with the board pursuant to Chapter 6 (commencing with Section 20610) and any school district or community college district that was a contracting agency on July 1, 1983, excluding that portion of a contract with the Los Angeles City Unified School District and the Los Angeles Community College District that pertains to local police officers, as defined in Section 20430, on July 1, 1983, and excluding a school district or a community college district, as defined in subdivision (i) of Section 20057, that entered into a contract with the board on or after January 1, 1990, and whose employees are school safety members, as defined in Section 20444.

(b) Notwithstanding subdivision (a), ''school employer'' may not include any county office of education, school district, or community college district that participates in a risk pool.

SEC. 4. Section 20225.5 of the Government Code is repealed.

SEC. 5. Section 20370 of the Government Code is amended to read:

20370. (a) ''Member'' means an employee who has qualified for membership in this system and on whose behalf an employer has become obligated to pay contributions.

(b) ''State member'' includes:

(1) State miscellaneous members.

(2) University members.

(3) Patrol members.

(4) State safety members.

(5) State industrial members.

(6) State peace officer/firefighter members.

(c) ''Local member'' includes:

(1) Local miscellaneous members.

(2) Local safety members.

(d) ''School member'' includes all employees within the jurisdiction of a school employer, other than local policemen, school safety members and members included in a risk pool.

SEC. 6. Section 20383 of the Government Code is amended to read:

20383. ''Local miscellaneous member'' includes all employees of a county office of education, school district, or community college district who are included in a risk pool and all employees of a contracting agency who have by contract been included within this system, except local safety members.

SEC. 7. Section 20815.5 of the Government Code is repealed.

SEC. 8. Section 20840 is added to the Government Code, to read:

20840. (a) Notwithstanding Sections 20616, 20618, and 20815, the board may create, combine or eliminate risk pools for local miscellaneous members and local safety members.

(b) The board shall establish, by regulation, the criteria under which contracting agencies shall participate in a risk pool and the criteria under which contracting agencies, county offices of education, school districts, and community college districts may participate in a risk pool. The criteria shall specify that county offices of education, school districts, and community college districts may only participate in a risk pool if the retirement formula of the risk pool is higher than the retirement formula applicable to school members. In determining the criteria, the board shall consider the expected variability of the employer contribution rate due to demographic events. In no event shall contracting agencies with more than 100 active members in a member classification be required to commence participation in a risk pool for members in that member classification. For the purpose of this subdivision an active member is a member who is an employee of the contracting agency.

(c) If a contracting agency, county office of education, school district, or community college district participates in a risk pool, the assets and

liabilities with respect to the affected member classification shall be combined with those of the risk pool.

(d) The board shall establish, by regulation, the circumstances under which a contracting agency may cease participation in a risk pool for a member classification.

(e) All of the following provisions shall apply, without election by the contracting agency participating in a risk pool, to local members included in a risk pool:

(1) Sections 20965, 21022, 21026, 21037, 21536, and 21548.

(2) Provisions to elect to receive credit for public service pursuant to Article 5 (commencing with Section 21020) of Chapter 11 that require the member to make the contributions as specified in Sections 21050 and 21052.

SEC. 9. Section 20841 is added to the Government Code, to read:

20841. (a) The employer contribution rate for a contracting agency, county office of education, school district, or community college district participating in a risk pool shall be determined by the actuary, taking into account the difference between the assets and liabilities that were brought into the risk pool with respect to the affected member classifications.

(b) The employer contribution rate for a contracting agency, county office of education, school district, or community college district participating in a risk pool may take into account the differences in the benefits provided by each employer to its members in the classification included in the risk pool.

(c) If a county office of education, school district, or community college district participates in a risk pool pursuant to this section and pays a contribution rate that differs from the rate established for school employers participating in a single account with respect to school members pursuant to subdivision (b) of Section 20225, the actual rate of employer contributions made to the Public Employees' Retirement System, for purposes of Section 42238.12 of the Education Code, shall be deemed to be the contributions that the county office of education or the district would have paid had the county office of education or the district participated in a single account for school members pursuant to subdivision (b) of Section 20225.

SEC. 10. Section 20842 is added to the Government Code, to read:

20842. Within six months after the effective date of any new option available to contracting agencies, the board shall (a) notify all contracting agencies participating in risk pools of the availability and approximate cost of the new option, (b) include the new option in at least one of the risk pools applicable to each member category to which the new option may apply, and (c) notify the contracting agencies of their

options if they are participating in a risk pool to which the new option is added and choose not to offer the new option to their employees.

CHAPTER 1134

An act to amend Section 538c of the Penal Code, relating to theft.

[Approved by Governor September 30, 2002. Filed with Secretary of State September 30, 2002.]

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

SECTION 1. Section 538c of the Penal Code is amended to read:

538c. (a) Except as provided in subdivision (c), any person who attaches or inserts an unauthorized advertisement in a newspaper, whether alone or in concert with another, and who redistributes it to the public or who has the intent to redistribute it to the public, is guilty of the crime of theft of advertising services which shall be punishable as a misdemeanor.

(b) As used in this section:

(1) ''Unauthorized advertisement'' means any form of representation or communication, including any handbill, newsletter, pamphlet, or notice that contains any letters, words, or pictorial representation that is attached to or inserted in a newspaper without a contractual agreement between the publisher and an advertiser.

(2) ''Newspaper'' includes any newspaper, magazine, periodical, or other tangible publication, whether offered for retail sale or distributed without charge.

(c) This section does not apply if the publisher or authorized distributor of the newspaper consents to the attachment or insertion of the advertisement.

(d) This section does not apply to a newspaper distributor who is directed to insert an unauthorized advertisement by a person or company supplying the newspapers, and who is not aware that the advertisement is unauthorized.

(e) A conviction under this section shall not constitute a conviction for petty theft.

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

changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

CHAPTER 1135

An act to amend Sections 12301.6, 12302.2, and 12302.25 of the Welfare and Institutions Code, relating to public social services.

[Approved by Governor September 30, 2002. Filed with Secretary of State September 30, 2002.]

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

SECTION 1. Section 12301.6 of the Welfare and Institutions Code is amended to read:

12301.6. (a) Notwithstanding Sections 12302 and 12302.1, a county board of supervisors may, at its option, elect to do either of the following:

(1) Contract with a nonprofit consortium to provide for the delivery of in-home supportive services.

(2) Establish, by ordinance, a public authority to provide for the delivery of in-home supportive services.

(b) (1) To the extent that a county elects to establish a public authority pursuant to paragraph (2) of subdivision (a), the enabling ordinance shall specify the membership of the governing body of the public authority, the qualifications for individual members, the manner of appointment, selection, or removal of members, how long they shall serve, and other matters as the board of supervisors deems necessary for the operation of the public authority.

(2) A public authority established pursuant to paragraph (2) of subdivision (a) shall be both of the following:

(A) An entity separate from the county, and shall be required to file the statement required by Section 53051 of the Government Code.

(B) A corporate public body, exercising public and essential governmental functions and that has all powers necessary or convenient to carry out the delivery of in-home supportive services, including the power to contract for services pursuant to Sections 12302 and 12302.1 and that makes or provides for direct payment to a provider chosen by the recipient for the purchase of services pursuant to Sections 12302 and 12302.2. Employees of the public authority shall not be employees of the county for any purpose.

(3) (A) As an alternative, the enabling ordinance may designate the board of supervisors as the governing body of the public authority.

(B) Any enabling ordinance that designates the board of supervisors as the governing body of the public authority shall also specify that no fewer than 50 percent of the membership of the advisory committee shall be individuals who are current or past users of personal assistance services paid for through public or private funds or recipients of services under this article.

(C) If the enabling ordinance designates the board of supervisors as the governing body of the public authority, it shall also require the appointment of an advisory committee of not more than 11 individuals who shall be designated in accordance with subparagraph (B).

(D) Prior to making designations of committee members pursuant to subparagraph (C), or governing body members in accordance with paragraph (4), the board of supervisors shall solicit recommendations of qualified members of either the governing body of the public authority or of any advisory committee through a fair and open process that includes the provision of reasonable, written notice to, and a reasonable response time by, members of the general public and interested persons and organizations.

(4) If the enabling ordinance does not designate the board of supervisors as the governing body of the public authority, the enabling ordinance shall require the membership of the governing body to meet the requirements of subparagraph (B) of paragraph (3).

(c) (1) Any public authority created pursuant to this section shall be deemed to be the employer of in-home supportive services personnel referred to recipients under paragraph (3) of subdivision (e) within the meaning of Chapter 10 (commencing with Section 3500) of Division 4 of Title 1 of the Government Code. Recipients shall retain the right to hire, fire, and supervise the work of any in-home supportive services personnel providing services to them.

(2) (A) Any nonprofit consortium contracting with a county pursuant to this section shall be deemed to be the employer of in-home supportive services personnel referred to recipients pursuant to paragraph (3) of subdivision (e) for the purposes of collective bargaining over wages, hours, and other terms and conditions of employment.

(B) Recipients shall retain the right to hire, fire, and supervise the work of any in-home supportive services personnel providing services for them.

(d) A public authority established pursuant to this section or a nonprofit consortium contracting with a county pursuant to this section, when providing for the delivery of services under this article by contract in accordance with Sections 12302 and 12302.1 or by direct payment to a provider chosen by a recipient in accordance with Sections 12302 and 12302.2, shall comply with and be subject to, all statutory and regulatory provisions applicable to the respective delivery mode.

(e) Any nonprofit consortium contracting with a county pursuant to this section or any public authority established pursuant to this section shall provide for all of the following functions under this article, but shall not be limited to those functions:

(1) The provision of assistance to recipients in finding in-home supportive services personnel through the establishment of a registry.

(2) Investigation of the qualifications and background of potential personnel.

(3) Establishment of a referral system under which in-home supportive services personnel shall be referred to recipients.

(4) Providing for training for providers and recipients.

(5) Performing any other functions related to the delivery of in-home supportive services.

(6) Ensuring that the requirements of the personal care option pursuant to Subchapter 19 (commencing with Section 1396) of Chapter 7 of Title 42 of the United States Code are met.

(f) (1) Any nonprofit consortium contracting with a county pursuant to this section or any public authority created pursuant to this section shall be deemed not to be the employer of in-home supportive services personnel referred to recipients under this section for purposes of liability due to the negligence or intentional torts of the in-home supportive services personnel.

(2) In no case shall a nonprofit consortium contracting with a county pursuant to this section or any public authority created pursuant to this section be held liable for action or omission of any in-home supportive services personnel whom the nonprofit consortium or public authority did not list on its registry or otherwise refer to a recipient.

(3) Counties and the state shall be immune from any liability resulting from their implementation of this section in the administration of the In-Home Supportive Services Program. Any obligation of the public authority or consortium pursuant to this section, whether statutory, contractual, or otherwise, shall be the obligation solely of the public authority or nonprofit consortium, and shall not be the obligation of the county or state.

(g) Any nonprofit consortium contracting with a county pursuant to this section shall ensure that it has a governing body that complies with the requirements of subparagraph (B) of paragraph (3) of subdivision (b) or an advisory committee that complies with subparagraphs (B) and (C) of paragraph (3) of subdivision (b).

(h) Recipients of services under this section may elect to receive services from in-home supportive services personnel who are not referred to them by the public authority or nonprofit consortium. Those personnel shall be referred to the public authority or nonprofit

consortium for the purposes of wages, benefits, and other terms and conditions of employment.

(i) (1) Nothing in this section shall be construed to affect the state's responsibility with respect to the state payroll system, unemployment insurance, or workers' compensation and other provisions of Section 12302.2 for providers of in-home supportive services.

(2) The Controller shall make any deductions from the wages of in-home supportive services personnel, who are employees of a public authority pursuant to paragraph (1) of subdivision (c), that are agreed to by that public authority in collective bargaining with the designated representative of the in-home supportive services personnel pursuant to Chapter 10 (commencing with Section 3500) of Division 4 of Title 1 of the Government Code and transfer the deducted funds as directed in that agreement.

(3) Any county that elects to provide in-home supportive services pursuant to this section shall be responsible for any increased costs to the in-home supportive services case management, information, and payrolling system attributable to that election. The department shall collaborate with any county that elects to provide in-home supportive services pursuant to this section prior to implementing the amount of financial obligation for which the county shall be responsible.

(j) To the extent permitted by federal law, personal care option funds, obtained pursuant to Subchapter 19 (commencing with Section 1396) of Chapter 7 of Title 42 of the United States Code, along with matching funds using the state and county sharing ratio established in subdivision (c) of Section 12306, or any other funds that are obtained pursuant to Subchapter 19 (commencing with Section 1396) of Chapter 7 of Title 42 of the United States Code, may be used to establish and operate an entity authorized by this section.

(k) Notwithstanding any other provision of law, the county, in exercising its option to establish a public authority, shall not be subject to competitive bidding requirements. However, contracts entered into by either the county, a public authority, or a nonprofit consortium pursuant to this section shall be subject to competitive bidding as otherwise required by law.

(*l*) (1) The department may adopt regulations implementing this section 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, the adoption of the regulations shall be deemed an emergency and necessary for the immediate preservation of the public peace, health and safety, or general welfare. Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government

Code, these emergency regulations shall not be subject to the review and approval of the Office of Administrative Law.

(2) Notwithstanding subdivision (h) of Section 11364.1 and Section 11349.6 of the Government Code, the department shall transmit these regulations directly to the Secretary of State for filing. The regulations shall become effective immediately upon filing by the Secretary of State.

(3) Except as otherwise provided for by Section 10554, the Office of Administrative Law shall provide for the printing and publication of these regulations in the California Code of Regulations. Emergency regulations adopted pursuant to this subdivision shall remain in effect for no more than 180 days.

(m) (1) In the event that a county elects to form a nonprofit consortium or public authority pursuant to subdivision (a) before the State Department of Health Services has obtained all necessary federal approvals pursuant to paragraph (3) of subdivision (j) of Section 14132.95, all of the following shall apply:

(A) Subdivision (c) shall apply only to those matters that do not require federal approval.

(B) The second sentence of subdivision (g) shall not be operative.

(C) The nonprofit consortium or public authority shall not provide services other than those specified in paragraphs (1), (2), (3), (4), and (5) of subdivision (d).

(2) Paragraph (1) shall become inoperative when the State Department of Health Services has obtained all necessary federal approvals pursuant to paragraph (3) of subdivision (j) of Section 14132.95.

(n) (1) One year after the effective date of the first approval by the department granted to the first public authority, the Bureau of State Audits shall commission a study to review the performance of that public authority.

(2) The study shall be submitted to the Legislature and the Governor not later than two years after the effective date of the approval specified in subdivision (a). The study shall give special attention to the health and welfare of the recipients under the public authority, 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.

(3) The report shall make recommendations to the Legislature and the Governor for any changes to this section that will further ensure the well-being of recipients and the most efficient delivery of required services.

(o) Commencing July 1, 1997, the department shall provide annual reports to the appropriate fiscal and policy committees of the Legislature

on the efficacy of the implementation of this section, and shall include an assessment of the quality of care provided pursuant to this section.

SEC. 2. Section 12302.2 of the Welfare and Institutions Code is amended to read:

12302.2. (a) (1) If the state or a county makes or provides for direct payment to a provider chosen by a recipient or to the recipient for the purchase of in-home supportive services, the department shall perform or assure the performance of all rights, duties and obligations of the recipient relating to those services as required for purposes of unemployment compensation, unemployment compensation disability benefits, workers' compensation, federal and state income tax, and federal old-age survivors and disability insurance benefits. Those rights, duties, and obligations include, but are not limited to, registration and obtaining employer account numbers, providing information, notices, and reports, making applications and returns, and withholding in trust from the payments made to or on behalf of a recipient amounts to be withheld from the wages of the provider by the recipient as an employer and transmitting those amounts along with amounts required for all contributions, premiums, and taxes payable by the recipient as the employer to the appropriate person or state or federal agency. The department may assure the performance of any or all of these rights, duties, and obligations by contract with any person, or any public or private agency.

(2) Contributions, premiums, and taxes shall be paid or transmitted on the recipient's behalf as the employer for any period commencing on or after January 1, 1978, except that contributions, premiums, and taxes for federal and state income taxes and federal old-age, survivors and disability insurance contributions shall be paid or transmitted pursuant to this section commencing with the first full month that begins 90 days after the effective date of this section.

(3) Contributions, premiums, and taxes paid or transmitted on the recipient's behalf for unemployment compensation, workers' compensation, and the employer's share of federal old-age survivors and disability insurance benefits shall be payable in addition to the maximum monthly amount established pursuant to Section 12303.5 or subdivision (a) of Section 12304 or other amount payable to or on behalf of a recipient. Contributions, premiums, or taxes resulting from liability incurred by the recipient as employer for unemployment compensation, workers' compensation, and federal old-age, survivors and disability insurance benefits with respect to any period commencing on or after January 1, 1978, and ending on or before the effective date of this section shall also be payable in addition to the maximum monthly amount established pursuant to Section 12303.5 or subdivision (a) of Section 12304 or other amount payable to or on behalf of the recipient. Nothing

in this section shall be construed to permit any interference with the recipient's right to select the provider of services or to authorize a charge for administrative costs against any amount payable to or on behalf of a recipient.

(b) If the state makes or provides for direct payment to a provider chosen by a recipient, the Controller shall make any deductions from the wages of in-home supportive services personnel that are authorized by Sections 1152 and 1153 of the Government Code, as limited by Section 3515.6 of the Government Code.

(c) Funding for the costs of administering this section and for contributions, premiums, and taxes paid or transmitted on the recipient's behalf as an employer pursuant to this section shall qualify, where possible, for the maximum federal reimbursement. To the extent that federal funds are inadequate, notwithstanding Section 12306, the state shall provide funding for the purposes of this section.

SEC. 3. Section 12302.25 of the Welfare and Institutions Code is amended to read:

12302.25. (a) On or before January 1, 2003, each county shall act as, or establish, an employer for in-home supportive service providers under Section 12302.2 for the purposes of Chapter 10 (commencing with Section 3500) of Division 4 of Title 1 of the Government Code and other applicable state or federal laws. Each county may utilize a public authority or nonprofit consortium as authorized under Section 12301.6, the contract mode as authorized under Sections 12302 and 12302.1, county administration of the individual provider mode as authorized under Sections 12302 and 12302.2 for purposes of acting as, or providing, an employer under Chapter 10 (commencing with Section 3500) of Division 4 of Title 1 of the Government Code, county civil service personnel as authorized under Section 12302, or mixed modes of service authorized pursuant to this article and may establish regional agreements in establishing an employer for purposes of this subdivision for providers of in-home supportive services. Within 30 days of the effective date of this section, the department shall develop a timetable for implementation of this subdivision to ensure orderly compliance by counties. Recipients of in-home supportive services shall retain the right to choose the individuals that provide their care and to recruit, select, train, reject, or change any provider under the contract mode or to hire, fire, train, and supervise any provider under any other mode of service. Upon request of a recipient, and in addition to a county's selected method of establishing an employer for in-home supportive service providers pursuant to this subdivision, counties with an IHSS caseload of more than 500 shall be required to offer an individual provider employer option.

(b) Nothing in this section shall prohibit any negotiations or agreement regarding collective bargaining or any wage and benefit enhancements.

(c) Nothing in this section shall be construed to affect the state's responsibility with respect to the state payroll system, unemployment insurance, or workers' compensation and other provisions of Section 12302.2 for providers of in-home supportive services.

(d) Prior to implementing subdivision (a), a county shall establish an advisory committee as required by Section 12301.3 and solicit recommendations from the advisory committee on the preferred mode or modes of service to be utilized in the county for in-home supportive services.

(e) Each county shall take into account the advice and recommendations of the in-home supportive services advisory committee, as established pursuant to Section 12301.3, prior to making policy and funding decisions about the program on an ongoing basis.

(f) In implementing and administering this section, no county, public authority, nonprofit consortium, contractor, or a combination thereof, that delivers in-home supportive services shall reduce the hours of service for any recipient below the amount determined to be necessary under the uniform assessment guidelines established by the department.

(g) Any agreement between a county and an entity acting as an employer under subdivision (a) shall include a provision that requires that funds appropriated by the state for wage increases for in-home supportive services providers be used exclusively for that purpose. Counties or the state may undertake audits of the entities acting as employers under the terms of subdivision (a) to verify compliance with this subdivision.

(h) On or before January 15, 2003, each county shall provide the department with documentation that demonstrates compliance with the January 1, 2003, deadline specified in subdivision (a). The documentation shall include, but is not limited to, any of the following:

(1) The public authority ordinance and employee relations procedures.

(2) The invitations to bid and requests for proposal for contract services for the contract mode.

(3) An invitation to bid and request for proposal for the operation of a nonprofit consortium.

(4) A county board of supervisors' resolution resolving that the county has chosen to act as the employer required by subdivision (a) either by utilizing county employees, as authorized by Section 12302, to provide in-home supportive services or through county administration of individual providers.

(5) Any combination of the documentation required under paragraphs (1) to (4), inclusive, that reflects the decision of a county to provide mixed modes of service as authorized under subdivision (a).

(i) Any county that is unable to provide the documentation required by subdivision (h) by January 15, 2003, may provide, on or before that date, a written notice to the department that does all of the following:

(1) Explains the county's failure to provide the required documentation.

(2) Describes the county's plan for coming into compliance with the requirements of this section.

(3) Includes a timetable for the county to come into compliance with this section, but in no case shall the timetable extend beyond March 31, 2003.

(j) Any county that fails to provide the documentation required by subdivision (h) and also fails to provide the written notice as allowed under subdivision (i), shall be deemed by operation of law to be the employer of IHSS individual providers for purposes of Chapter 10 (commencing with Section 3500) of Division 4 of Title 1 of the Government Code as of January 15, 2003.

(k) Any county that provides a written notice as allowed under subdivision (i), but fails to provide the documentation required under subdivision (h) by March 31, 2003, shall be deemed by operation of law to be the employer of IHSS individual providers for purposes of Chapter 10 (commencing with Section 3500) of Division 4 of Title 1 of the Government Code as of April 1, 2003.

(*l*) Any county deemed by operation of law, pursuant to subdivision (j) or (k), to be the employer of IHSS individual providers for purposes of Chapter 10 (commencing with Section 3500) of Division 4 of Title 1 of the Government Code shall continue to act in that capacity until the county notifies the department that it has established another employer as permitted by this section, and has provided the department with the documentation required under subdivision (h) demonstrating the change.

(m) Section 10605 may be applied in each county that has not complied with this section by January 1, 2003.

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

million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

CHAPTER 1136

An act to add Section 2104.5 to the Business and Professions Code, relating to healing arts.

[Approved by Governor September 30, 2002. Filed with Secretary of State September 30, 2002.]

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

SECTION 1. (a) The Legislature finds and declares all of the following:

(1) The Fifth Pathway Program allows a citizen of the United States who attended medical school in a foreign country and completed one academic year of supervised clinical training in an approved medical school located in the United States and one year of a residency program, to apply for licensure as a physician and surgeon.

(2) The clinical training component of the Fifth Pathway Program is not currently offered in medical schools located in California.

(3) The Fifth Pathway Program is currently utilized successfully in New York, and has been utilized successfully in California in the past, to increase the number of physicians and surgeons who have an understanding of foreign cultures and a proficiency in a foreign language that they obtained while attending medical school in a foreign country.

(4) California is currently experiencing a shortage of health care providers with the cultural and linguistic competency to serve the state's diverse population, which has contributed to a lack of access to care in many immigrant communities.

(b) It is the intent of the Legislature to facilitate the establishment of one or more Fifth Pathway Programs at approved medical schools in California so that United States citizens who have graduated from a medical school in a foreign country can more easily obtain licensure in this state.

SEC. 2. Section 2104.5 is added to the Business and Professions Code, to read:

2104.5. The board, in consultation with various medical schools located in California, the Office of Statewide Health Planning and Development, and executive directors and medical directors of nonprofit community health centers, hospital administrators, and medical directors with experience hiring graduates of the Fifth Pathway Program

or foreign medical school graduates shall study methods to reactivate the Fifth Pathway Program in medical schools located in this state. The executive directors and medical directors of nonprofit community health centers, the hospital administrators, and the medical directors should serve or work with underserved populations or in facilities located in medically underserved communities or in health professional shortage areas. The board shall submit a report to the Legislature on or before July 1, 2003, that shall include options for the Legislature to consider in order to facilitate the establishment of one or more Fifth Pathway Programs in medical schools located in California. The study shall focus on whether the Fifth Pathway Program can address the needs of areas where a shortage of providers exists, communities with a non-English speaking population in need of medical providers who speak their native language and understand their culture, and whether it can provide greater provider stability in these communities.

CHAPTER 1137

An act to amend Section 3509 of, and to add Section 3509.5 to, the Government Code, relating to local public employee organizations.

[Approved by Governor September 30, 2002. Filed with Secretary of State September 30, 2002.]

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

SECTION 1. (a) The Legislature finds and declares that by enacting this act it does not intend to restrict or expand the Public Employment Relations Board's jurisdiction or authority beyond that previously authorized by the Legislature.

(b) It is the intent of the Legislature that the amendments made to Section 3509 of the Government Code by this act are intended to be technical and clarifying of existing law.

(c) It is further the intent of the Legislature by adding Section 3509.5 to the Government Code to establish procedures for judicial review of determinations by the Public Employment Relations Board.

SEC. 2. Section 3509 of the Government Code is amended to read:

3509. (a) The powers and duties of the board described in Section 3541.3 shall also apply, as appropriate, to this chapter and shall include the authority as set forth in subdivisions (b) and (c).

(b) A complaint alleging any violation of this chapter or of any rules and regulations adopted by a public agency pursuant to Section 3507 shall be processed as an unfair practice charge by the board. The initial

determination as to whether the charge of unfair practice is justified and, if so, the appropriate remedy necessary to effectuate the purposes of this chapter, shall be a matter within the exclusive jurisdiction of the board. The board shall apply and interpret unfair labor practices consistent with existing judicial interpretations of this chapter.

(c) The board shall enforce and apply rules adopted by a public agency concerning unit determinations, representation, recognition, and elections.

(d) Notwithstanding subdivisions (a) to (c), inclusive, the employee relations commissions established by, and in effect for, the County of Los Angeles and the City of Los Angeles pursuant to Section 3507 shall have the power and responsibility to take actions on recognition, unit determinations, elections, and all unfair practices, and to issue determinations and orders as the employee relations commissions deem necessary, consistent with and pursuant to the policies of this chapter.

(e) This section shall not apply to employees designated as management employees under Section 3507.5.

(f) The board shall not find it an unfair practice for an employee organization to violate a rule or regulation adopted by a public agency if that rule or regulation is itself in violation of this chapter. This subdivision shall not be construed to restrict or expand the board's jurisdiction or authority as set forth in subdivisions (a) to (c), inclusive.

SEC. 3. Section 3509.5 is added to the Government Code, to read:

3509.5. (a) Any charging party, respondent, or intervenor aggrieved by a final decision or order of the board in an unfair practice case, except a decision of the board not to issue a complaint in such a case, and any party to a final decision or order of the board in a unit determination, representation, recognition, or election matter that is not brought as an unfair practice case, may petition for a writ of extraordinary relief from that decision or order. A board order directing an election may not be stayed pending judicial review.

(b) A petition for a writ of extraordinary relief shall be filed in the district court of appeal having jurisdiction over the county where the events giving rise to the decision or order occurred. The petition shall be filed within 30 days from the date of the issuance of the board's final decision or order, or order denying reconsideration, as applicable. Upon the filing of the petition, the court shall cause notice to be served upon the board and thereafter shall have jurisdiction of the proceeding. The board shall file in the court the record of the proceeding, certified by the board, within 10 days after the clerk's notice unless that time is extended by the court for good cause shown. The court shall have jurisdiction to grant any temporary relief or restraining order it deems just and proper, and in like manner to make and enter a decree enforcing, modifying, and enforcing as modified, or setting aside in whole or in part the decision

or order of the board. The findings of the board with respect to questions of fact, including ultimate facts, if supported by substantial evidence on the record considered as a whole, shall be conclusive. Title 1 (commencing with Section 1067) of Part 3 of the Code of Civil Procedure relating to writs shall, except where specifically superseded by this section, apply to proceedings pursuant to this section.

(c) If the time to petition for extraordinary relief from a board decision or order has expired, the board may seek enforcement of any final decision or order in a district court of appeal or superior court having jurisdiction over the county where the events giving rise to the decision or order occurred. The board shall respond within 10 days to any inquiry from a party to the action as to why the board has not sought court enforcement of the final decision or order. If the response does not indicate that there has been compliance with the board's final decision or order, the board shall seek enforcement of the final decision or order upon the request of the party. The board shall file in the court the record of the proceeding, certified by the board, and appropriate evidence disclosing the failure to comply with the decision or order. If, after hearing, the court determines that the order was issued pursuant to the procedures established by the board and that the person or entity refuses to comply with the order, the court shall enforce the order by writ of mandamus or other proper process. The court may not review the merits of the order.

CHAPTER 1138

An act to add Section 4409 to the Business and Professions Code, and to add Article 2 (commencing with Section 128198) to Chapter 3 of Part 3 of Division 107 of the Health and Safety Code, relating to health professions.

[Approved by Governor September 30, 2002. Filed with Secretary of State September 30, 2002.]

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

SECTION 1. Section 4409 is added to the Business and Professions Code, to read:

4409. At the time a pharmacy license is renewed pursuant to subdivision (a) of Section 4110 or a pharmacist license is renewed pursuant to Section 4401, the pharmacy or pharmacist may make a twenty-five dollar ($25) contribution, to be submitted to the board, for the sole purpose of funding the California Pharmacist Scholarship and

Loan Repayment Program established pursuant to Article 5 (commencing with Section 128050) of Chapter 2 of Part 3 of Division 107 of the Health and Safety Code. The contribution submitted pursuant to this section shall be paid into the State Treasury and credited to the California Pharmacist Scholarship and Loan Repayment Program Fund established pursuant to Section 128051 of the Health and Safety Code.

SEC. 2. Article 2 (commencing with Section 128198) is added to Chapter 3 of Part 3 of Division 107 of the Health and Safety Code, to read:

Article 2. California Pharmacist Scholarship and Loan Repayment Program

128198. (a) (1) There is hereby established in the Office of Statewide Health Planning and Development the California Pharmacist Scholarship and Loan Repayment Program.

(2) The program shall provide scholarships to pay for the educational expenses of pharmacy school students and repay qualifying educational loans of pharmacists who agree to participate in designated medically underserved areas as provided in this section.

(b) The Office of Statewide Health Planning and Development shall administer the California Pharmacist Scholarship and Loan Repayment Program utilizing the same general guidelines applicable to the federal National Health Service Corps Scholarship Program established pursuant to Section 254*l* of Title 42 of the United States Code and the National Health Service Corps Loan Repayment Program established pursuant to Section 254*l*-1 of Title 42 of the United States Code, except as follows:

(1) A pharmacist or pharmacy school student shall be eligible to participate in the program if he or she agrees to provide pharmacy services in a practice site located in areas of the state where unmet priority needs for primary care family physicians exist as determined by the Health Manpower Policy Commission.

(2) No matching funds shall be required from any entity in the practice site area.

(c) This section shall be implemented only to the extent that sufficient moneys are available in the California Pharmacist Scholarship and Loan Repayment Program Fund to administer the program.

128198.5. The California Pharmacist Scholarship and Loan Repayment Program Fund is hereby established in the State Treasury. Revenues from the contributions made pursuant to Section 4409 of the Business and Professions Code, as well as any other private or public funds made available for purposes of the California Pharmacist Scholarship and Loan Repayment Program, shall be deposited into the

fund. Upon appropriation by the Legislature, moneys in the fund shall be available for expenditure by the Office of Statewide Health Planning and Development for purposes of implementing the California Pharmacist Scholarship and Loan Repayment Program pursuant to this article. The Office of Statewide Health Planning and Development shall be under no obligation to administer a program under this article until sufficient moneys have been accumulated in the fund and appropriated to the office by the Legislature.

CHAPTER 1139

An act to amend Sections 20636 and 20816 of, and to add Sections 20096.3 and 21063 to, the Government Code, relating to retirement.

[Approved by Governor September 30, 2002. Filed with Secretary of State September 30, 2002.]

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

SECTION 1. Section 20096.3 is added to the Government Code, to read:

20096.3. If an incumbent member of the board, holding a board seat described in subdivision (g) of Section 20090, does not deliver his or her completed nomination documents to the election coordinator for reelection by the applicable filing deadline for candidates for the seat, any otherwise eligible person other than the person who was the incumbent on the filing deadline shall have until 10 days after the filing deadline to file nomination documents for the same office. This section is not applicable if there is no incumbent eligible to be elected or if the notice of election states that the incumbent does not intend to be a candidate for reelection.

SEC. 2. Section 20636 of the Government Code is amended to read:

20636. (a) ''Compensation earnable'' by a member means the payrate and special compensation of the member, as defined by subdivisions (b), (c), and (g), and as limited by Section 21752.5.

(b) (1) ''Payrate'' means the normal monthly rate of pay or base pay of the member paid in cash to similarly situated members of the same group or class of employment for services rendered on a full-time basis during normal working hours. ''Payrate,'' for a member who is not in a group or class, means the monthly rate of pay or base pay of the member, paid in cash and pursuant to publicly available pay schedules, for services rendered on a full-time basis during normal working hours, subject to the limitations of paragraph (2) of subdivision (e).

(2) ''Payrate'' shall include any amount deducted from a member's salary for any of the following:

(A) Participation in a deferred compensation plan.

(B) Payment for participation in a retirement plan that meets the requirements of Section 401(k) of Title 26 of the United States Code.

(C) Payment into a money purchase pension plan and trust that meets the requirements of Section 401(a) of Title 26 of the United States Code.

(D) Participation in a flexible benefits program.

(3) The computation for any leave without pay of a member shall be based on the compensation earnable by him or her at the beginning of the absence.

(4) The computation for time prior to entering state service shall be based on the compensation earnable by him or her in the position first held by him or her in state service.

(c) (1) Special compensation of a member includes any payment received for special skills, knowledge, abilities, work assignment, workdays or hours, or other work conditions.

(2) Special compensation shall be limited to that which is received by a member pursuant to a labor policy or agreement or as otherwise required by state or federal law, to similarly situated members of a group or class of employment that is in addition to payrate. If an individual is not part of a group or class, special compensation shall be limited to that which the board determines is received by similarly situated members in the closest related group or class that is in addition to payrate, subject to the limitations of paragraph (2) of subdivision (e).

(3) Special compensation shall be for services rendered during normal working hours and, when reported to the board, the employer shall identify the pay period in which the special compensation was earned.

(4) Special compensation may include the full monetary value of normal contributions paid to the board by the employer, on behalf of the member and pursuant to Section 20691, if the employer's labor policy or agreement specifically provides for the inclusion of the normal contribution payment in compensation earnable.

(5) The monetary value of any service or noncash advantage furnished by the employer to the member, except as expressly and specifically provided in this part, is not special compensation unless regulations promulgated by the board specifically determine that value to be ''special compensation.''

(6) The board shall promulgate regulations that delineate more specifically and exclusively what constitutes ''special compensation'' as used in this section. A uniform allowance, the monetary value of employer-provided uniforms, holiday pay, and premium pay for hours worked within the normally scheduled or regular working hours that are

in excess of the statutory maximum workweek or work period applicable to the employee under Section 201 et seq. of Title 29 of the United States Code shall be included as special compensation and appropriately defined in those regulations.

(7) Special compensation does not include any of the following:

(A) Final settlement pay.

(B) Payments made for additional services rendered outside of normal working hours, whether paid in lump sum or otherwise.

(C) Any other payments the board has not affirmatively determined to be special compensation.

(d) Notwithstanding any other provision of law, payrate and special compensation schedules, ordinances, or similar documents shall be public records available for public scrutiny.

(e) (1) As used in this part, ''group or class of employment'' means a number of employees considered together because they share similarities in job duties, work location, collective bargaining unit, or other logical work related grouping. One employee may not be considered a group or class.

(2) Increases in compensation earnable granted to any employee who is not in a group or class shall be limited during the final compensation period applicable to the employees, as well as the two years immediately preceding the final compensation period, to the average increase in compensation earnable during the same period reported by the employer for all employees who are in the same membership classification, except as may otherwise be determined pursuant to regulations adopted by the board that establish reasonable standards for granting exceptions.

(f) As used in this part, ''final settlement pay'' means any pay or cash conversions of employee benefits that are in excess of compensation earnable, that are granted or awarded to a member in connection with, or in anticipation of, a separation from employment. The board shall promulgate regulations that delineate more specifically what constitutes final settlement pay.

(g) (1) Notwithstanding subdivision (a), ''compensation earnable'' for state members means the average monthly compensation, as determined by the board, upon the basis of the average time put in by members in the same group or class of employment and at the same rate of pay, and is composed of the payrate and special compensation of the member. The computation for any absence of a member shall be based on the compensation earnable by him or her at the beginning of the absence and for time prior to entering state service shall be based on the compensation earnable by him or her in the position first held by him or her in that state service.

(2) Notwithstanding subdivision (b), ''payrate'' for state members means the average monthly remuneration paid in cash out of funds paid

by the employer to similarly situated members of the same group or class of employment, in payment for the member's services or for time during which the member is excused from work because of holidays, sick leave, vacation, compensating time off, or leave of absence. ''Payrate'' for state members shall include:

(A) Any amount deducted from a member's salary for any of the following:

(i) Participation in a deferred compensation plan established pursuant to Chapter 4 (commencing with Section 19993) of Part 2.6.

(ii) Payment for participation in a retirement plan that meets the requirements of Section 401(k) of Title 26 of the United States Code.

(iii) Payment into a money purchase pension plan and trust that meets the requirements of Section 401(a) of Title 26 of the United States Code.

(iv) Participation in a flexible benefits program.

(B) Any payment in cash by the member's employer to one other than an employee for the purpose of purchasing an annuity contract for a member under an annuity plan that meets the requirements of Section 403(b) of Title 26 of the United States Code.

(C) Employer ''pick up'' of member contributions that meets the requirements of Section 414(h)(2) of Title 26 of the United States Code.

(D) Any disability or workers' compensation payments to safety members in accordance with Section 4800 of the Labor Code.

(E) Temporary industrial disability payments pursuant to Article 4 (commencing with Section 19869) of Chapter 2.5 of Part 2.6.

(F) Any other payments the board may determine to be within ''payrate.''

(3) Notwithstanding subdivision (c), ''special compensation'' for state members shall mean all of the following:

(A) The monetary value, as determined by the board, of living quarters, board, lodging, fuel, laundry, and other advantages of any nature furnished to a member by his or her employer in payment for the member's services.

(B) Any compensation for performing normally required duties, such as holiday pay, bonuses (for duties performed on regular work shift), educational incentive pay, maintenance and noncash payments, out-of-class pay, marksmanship pay, hazard pay, motorcycle pay, paramedic pay, emergency medical technician pay, POST certificate pay, and split shift differential.

(C) Compensation for uniforms, except as provided in Section 20632.

(D) Any other payments the board may determine to be within ''special compensation.''

(4) Neither "payrate" nor "special compensation" for state members includes any of the following:

(A) The provision by the state employer of any medical or hospital service or care plan or insurance plan for its employees (other than the purchase of annuity contracts as described below in this subdivision), any contribution by the employer to meet the premium or charge for that plan, or any payment into a private fund to provide health and welfare benefits for employees.

(B) Any payment by the state employer of the employee portion of taxes imposed by the Federal Insurance Contribution Act.

(C) Amounts not available for payment of salaries and that are applied by the employer for the purchase of annuity contracts including those that meet the requirements of Section 403(b) of Title 26 of the United States Code.

(D) Any benefits paid pursuant to Article 5 (commencing with Section 19878) of Chapter 2.5 of Part 2.6.

(E) Employer payments that are to be credited as employee contributions for benefits provided by this system, or employer payments that are to be credited to employee accounts in deferred compensation plans. The amounts deducted from a member's wages for participation in a deferred compensation plan may not be considered to be ''employer payments.''

(F) Payments for unused vacation, annual leave, personal leave, sick leave, or compensating time off, whether paid in lump sum or otherwise.

(G) Final settlement pay.

(H) Payments for overtime, including pay in lieu of vacation or holiday.

(I) Compensation for additional services outside regular duties, such as standby pay, callback pay, court duty, allowance for automobiles, and bonuses for duties performed after the member's regular work shift.

(J) Amounts not available for payment of salaries and which are applied by the employer for any of the following:

(i) The purchase of a retirement plan which meets the requirements of Section 401(k) of Title 26 of the United States Code.

(ii) Payment into a money purchase pension plan and trust which meets the requirements of Section 401(a) of Title 26 of the United States Code.

(K) Payments made by the employer to or on behalf of its employees who have elected to be covered by a flexible benefits program, where those payments reflect amounts that exceed the employee's salary.

(L) Any other payments the board may determine are not ''payrate'' or ''special compensation.''

(5) If the provisions of this subdivision, including the board's determinations pursuant to subparagraph (F) of paragraph (2) and subparagraph (D) of paragraph (3), are in conflict with the provisions of a memorandum of understanding reached pursuant to Section 3517.5 or

3560, 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, those provisions may not become effective unless approved by the Legislature in the annual Budget Act. No memorandum of understanding reached pursuant to Section 3517.5 or 3560 may exclude from the definition of either ''payrate'' or ''special compensation'' a member's base salary payments or payments for time during which the member is excused from work because of holidays, sick leave, vacation, compensating time off, or leave of absence. If any items of compensation earnable are included by memorandum of understanding as ''payrate'' or ''special compensation'' for retirement purposes for represented and higher education employees pursuant to this paragraph, the Department of Personnel Administration or the Trustees of the California State University shall obtain approval from the board for that inclusion.

(6) (A) Subparagraph (B) of paragraph (3) of this subdivision prescribes that compensation earnable includes any compensation for performing normally required duties, such as holiday pay, bonuses (for duties performed on regular work shift), educational incentive pay, maintenance and noncash payments, out-of-class pay, marksmanship pay, hazard pay, motorcycle pay, paramedic pay, emergency medical technician pay, POST certificate pay, and split shift differential; and includes compensation for uniforms, except as provided in Section 20632; and subparagraph (I) of paragraph (4) excludes from compensation earnable compensation for additional services outside regular duties, such as standby pay, callback pay, court duty, allowance for automobile, and bonuses for duties performed after regular work shift.

(B) Notwithstanding subparagraph (A), the Department of Personnel Administration shall determine which payments and allowances that are paid by the state employer shall be considered compensation for retirement purposes for any employee who either is excluded from the definition of state employee in Section 3513, or is a nonelected officer or employee of the executive branch of government who is not a member of the civil service.

(C) Notwithstanding subparagraph (A), the Trustees of the California State University shall determine which payments and allowances that are paid by the trustees shall be considered compensation for retirement purposes for any managerial employee, as defined in Section 3562, or supervisory employee as defined in Section 3580.3.

SEC. 3. 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 may not be included. On and after January 1, 2003, a transfer of assets may not be made pursuant to this subdivision unless the member contributions of each member in a membership classification are satisfied through the transfer. An employer electing a transfer of assets pursuant to this subdivision shall satisfy the members' contributions for a period of not less than one month and not more than one year.

(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, if 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.

SEC. 4. Section 21063 is added to the Government Code, to read:

21063. A member may request a meeting, to be conducted by the member's employer, at which the employer shall explain to the member the elements of the member's past or current compensation that have been or will be reported to the board as compensation earnable. The information provided to the member at the meeting shall be provided orally and in writing and a copy of the writing shall be provided to the member for his or her records.

CHAPTER 1140

An act to add Article 1.5 (commencing with Section 92605) to Chapter 6 of Part 57 of the Education Code, relating to the University of California.

[Approved by Governor September 30, 2002. Filed with Secretary of State September 30, 2002.]

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

SECTION 1. (a) The Legislature finds and declares all of the following:

(1) In September 1997, Resolution Chapter 103 of the Statutes of 1997 directed the California Postsecondary Education Commission (CPEC) to investigate the reasons why health care professionals choose not to practice in underserved areas.

(2) In its April 1999 report, entitled ''Recommendations on Strategies to Enhance the Delivery of Health Care to All Californians,'' CPEC concluded that, although California has an adequate supply of physicians, their inequitable distribution across the state disadvantages over 4,000,000 Californians, particularly those in rural areas and inner city communities with large numbers of African American and Latino residents.

(3) CPEC's April 1999 report also concluded that the recent decline in enrollment in medical schools of students from communities whose health care needs are presently underserved presents a challenge because these are the physicians in training most likely to return to their home neighborhoods to practice.

(4) In October 2001, the Center for California Health Workforce Studies of the University of California, San Francisco, in its study, entitled "Migration Patterns of Underrepresented Minority Californians in Medicine," found that the number of underrepresented minority Californians entering medical school who enrolled in California medical schools decreased from 59 percent in 1993 to 43 percent in 1999.

(5) The Center for California Health Workforce Studies also concluded that increasing the number of underrepresented minority Californians in California's residency programs is an important strategy for increasing the state's supply of underrepresented minority physicians. One of the center's major recommendations was the expansion of the Charles R. Drew/UCLA Undergraduate Medical Education Program. The Drew/UCLA program has been highly successful in recruiting underrepresented minority medical students.

(b) It is, therefore, the intent of the Legislature to request the Regents of the University of California to develop, in collaboration with the Charles R. Drew/UCLA Medical School, a plan and timeline for the expansion of the Charles R. Drew/UCLA Undergraduate Medical Education Program in order to assist the state in addressing the state's physician workforce needs. Increasing the size of the entering class of the Drew/UCLA program would significantly enlarge the cadre of physicians who are likely to provide care to California's underserved populations.

SEC. 2. Article 1.5 (commencing with Section 92605) is added to Chapter 6 of Part 57 of the Education Code, to read:

Article 1.5. Charles R. Drew/UCLA Undergraduate Medical Education Program

92605. (a) The regents are hereby requested to consider, as a component of the University of California's current systemwide medical education program assessment, the expansion of the Charles R. Drew/UCLA Undergraduate Medical Education Program.

(b) The regents are further requested to submit, not later than June 30, 2003, a report summarizing their findings regarding the Charles R. Drew/UCLA Undergraduate Medical Education Program to the

Governor, the Legislature, and the California Postsecondary Education Commission.

CHAPTER 1141

An act to amend the heading of Part 4 (commencing with Section 13900) of Division 3 of Title 2 of, to add Section 13974.2 to, to add Chapter 5 (commencing with Section 13950) to, to add a heading as Chapter 5.5 to, to repeal Sections 13955.5, 13968, 13969, 13969.2, 13969.5, and 13969.7 of, to repeal the heading of Article 2 (commencing with Section 13970) of Chapter 5 of, to repeal Article 1 (commencing with Section 13959) of Chapter 5 of, and to repeal the heading of Chapter 5 (commencing with Section 13959) of, Part 4 of Division 3 of Title 2 of, the Government Code, and to add Sections 1202.42 and 1202.43 to the Penal Code, relating to victims of crime, and making an appropriation therefor.

[Approved by Governor September 30, 2002. Filed with Secretary of State September 30, 2002.]

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

SECTION 1. The heading of Part 4 (commencing with Section 13900) of Division 3 of Title 2 of the Government Code is amended to read:

PART 4. CALIFORNIA VICTIM COMPENSATION AND GOVERNMENT CLAIMS BOARD

SEC. 2. Chapter 5 (commencing with Section 13950) is added to Part 4 of Division 3 of Title 2 of the Government Code, to read:

CHAPTER 5. INDEMNIFICATION OF VICTIMS OF CRIME

Article 1. General Provisions

13950. (a) The Legislature finds and declares that it is in the public interest to assist residents of the State of California in obtaining compensation for the pecuniary losses they suffer as a direct result of criminal acts.

(b) This chapter shall govern the procedure by which crime victims may obtain compensation from the Restitution Fund.

(c) Any reference in statute or regulations to Article 1 (commencing with Section 13959) of Chapter 5, as it read on December 31, 2002, shall be construed to refer to this chapter.

13951. As used in this chapter, the following definitions shall apply:

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

(b) (1) ''Crime'' means a crime or public offense, wherever it may take place, that would constitute a misdemeanor or a felony if the crime had been committed in California by a competent adult.

(2) ''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.

(c) ''Derivative victim'' means an individual who sustains pecuniary loss as a result of injury or death to a victim.

(d) ''Law enforcement'' means every district attorney, municipal police department, sheriff's department, district attorney's office, county probation department, and social services agency, the Department of Justice, the Department of Corrections, the Department of the Youth Authority, the Department of the California Highway Patrol, the police department of any campus of the University of California, California State University, or community college, and every agency of the State of California expressly authorized by statute to investigate or prosecute law violators.

(e) ''Pecuniary loss'' means an economic loss or expense resulting from an injury or death to a victim of crime that has not been and will not be reimbursed from any other source.

(f) ''Peer counseling'' means counseling offered by 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 within the State of California.

(g) ''Victim'' means an individual who sustains injury or death as a direct result of a crime as specified in subdivision (e) of Section 13955.

(h) ''Victim center'' means a victim and witness assistance center that receives funds pursuant to Section 13835.2 of the Penal Code.

Article 2. Applications for Compensation

13952. (a) An application for compensation shall be filed with the board in the manner determined by the board.

(b) (1) The application for compensation shall be verified under penalty of perjury by the individual who is seeking compensation, who may be the victim or derivative victim, or an individual seeking reimbursement for burial, funeral, or crime scene cleanup expenses

pursuant to subdivision (i) of Section 13957. If the individual seeking compensation 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, guardian, conservator, or relative caregiver of the victim or derivative victim for whom the application is made. However, if a minor seeks compensation only for expenses for medical, medical related, psychiatric, psychological, or other mental health counseling related services and the minor is authorized by statute to consent to those services, the minor may verify the application for compensation under penalty of perjury.

(2) For purposes of this subdivision, ''relative caregiver'' means a relative as defined in subdivision (i) of Section 6550 of the Family Code, who assumed primary responsibility for the child while the child was in the relative's care and control, and who is not a biological or adoptive parent.

(c) (1) The board may require submission of additional information supporting the application that is reasonably necessary to verify the application and determine eligibility for compensation.

(2) The staff of the board shall determine whether an application for compensation contains all of the information required by the board. If the staff determines that an application does not contain all of the required information, the staff shall communicate that determination to the applicant with a brief statement of the additional information required. The applicant, within 30 calendar days of being notified that the application is incomplete, may either supply the additional information or appeal the staff's determination to the board, which shall review the application to determine whether it is complete.

13952.5. (a) An emergency award shall be available to a person eligible for compensation pursuant to this chapter if the board determines that such an award is necessary to avoid or mitigate substantial hardship that may result from delaying compensation until complete and final consideration of an application.

(b) The board shall establish the method for requesting an emergency award, which may include, but need not be limited to, requiring submission of the regular application as provided for in Section 13952.

(c) (1) The board may grant an emergency award based solely on the application of the victim or derivative victim. The board may refuse to grant an emergency award where it has reason to believe that the applicant will not be eligible for compensation under this chapter.

(2) By mutual agreement between the staff of the board and the applicant or the applicant's representative, the staff of the board may take additional 10-day periods to verify the emergency award claim and make payment.

(3) The board may delegate authority to designated staff persons and designated agencies, including, but not limited to, district attorneys, probation departments, victim centers, and other victim service providers approved by the board and under contract with the board, who shall use guidelines established by the board, to grant and disburse emergency awards.

(d) Disbursements of funds for emergency awards shall be made within 30 calendar days of application.

(e) (1) If an application for an emergency award is denied, the board shall notify the applicant in writing of the reasons for the denial.

(2) An applicant for an emergency award shall not be entitled to a hearing before the board to contest a denial of an emergency award. However, denial of an emergency award shall not prevent further consideration of the application for a regular award and shall not affect the applicant's right to a hearing pursuant to Section 13959 if staff recommends denial of a regular award.

(f) (1) If upon final disposition of the regular application, it is found that the applicant is not eligible for compensation from the board, the applicant shall reimburse the board for the emergency award pursuant to an agreed-upon repayment schedule.

(2) If upon a final disposition of the application, the board grants compensation to the applicant, the amount of the emergency award shall be deducted from the final award of compensation. If the amount of the compensation is less than the amount of the emergency award, the excess amount shall be treated as an overpayment pursuant to Section 13965.

(3) ''Final disposition,'' for the purposes of this section, shall mean the final decision of the board with respect to the victim's or derivative victim's application, before any action for judicial review is instituted.

(g) The amount of an emergency award shall be dependent upon the immediate needs of the victim or derivative victim subject to rates and limitations established by the board.

13953. (a) An application for compensation shall be filed within one year of the date of the crime, one year after the victim attains 18 years of age, or one year of the time the victim or derivative victim knew or in the exercise of ordinary diligence could have discovered that an injury or death had been sustained as a direct result of crime, whichever is later.

(b) The board may for good cause grant an extension of the time period in subdivision (a). In making this determination, the board may consider any relevant factors including, but not limited to, all of the following:

(1) A recommendation from the prosecuting attorney regarding the victim's or derivative victim's cooperation with law enforcement and the prosecuting attorney in the apprehension and prosecution of the person charged with the crime.

(2) Whether particular events occurring during the prosecution or in the punishment of the person convicted of the crime have resulted in the victim or derivative victim incurring additional pecuniary loss.

(3) Whether the nature of the crime is such that a delayed reporting of the crime is reasonably excusable.

(c) The period prescribed in this section 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.

13954. (a) The board shall verify with hospitals, physicians, law enforcement officials, or other interested parties involved, the treatment of the victim or derivative victim, circumstances of the crime, amounts paid or received by or for the victim or derivative victim, and any other pertinent information deemed necessary by the board. Verification information shall be returned to the board within 10 business days after a request for verification has been made by the board. Verification information shall be provided at no cost to the applicant, the board, or victim centers. When requesting verification information, the board shall certify that a signed authorization by the applicant is retained in the applicant's file and that this certification constitutes actual authorization for the release of information, notwithstanding any other provision of law. If requested by a physician or mental health provider, the board shall provide a copy of the signed authorization for the release of information.

(b) The victim and the applicant, if other than the victim, shall cooperate with the staff of the board or the victim center in the verification of the information contained in the application. Failure to cooperate shall be reported to the board, which, in its discretion, may reject the application solely on this ground.

(c) The board may contract with victim centers to provide verification of applications processed by the centers pursuant to conditions stated in subdivision (a). The board and its staff shall cooperate with the Office of Criminal Justice Planning and victim centers in conducting training sessions for center personnel and shall cooperate in the development of standardized verification procedures to be used by the victim centers in the state. The board and its staff shall cooperate with victim centers in disseminating standardized board policies and findings as they relate to the centers.

(d) Notwithstanding Section 827 of the Welfare and Institutions Code or any other provision of law, every law enforcement and social service agency in the state shall provide to the board or to victim centers that have contracts with the board pursuant to subdivision (c), upon request, a copy of a petition filed in a juvenile court proceeding, reports of the probation officer, any other document made available to the probation officer or to the judge, referee, or other hearing officer, a complete copy of the report regarding the incident, and any supplemental reports

involving the crime, public offense, or incident giving rise to a claim, for the specific purpose of the submission of a claim or the determination of eligibility to submit a claim filed pursuant to this chapter. The board and victim centers receiving records pursuant to this subdivision may not disclose a document that personally identifies a minor to anyone other than the minor who is so identified, his or her custodial parent or guardian, the attorneys for those parties, and any other persons that may be designated by court order. Any information received pursuant to this section shall be received in confidence for the limited purpose for which it was provided and may not be further disseminated. A violation of this subdivision is a misdemeanor punishable by a fine not to exceed five hundred dollars ($500).

(e) The law enforcement agency supplying information pursuant to this section may withhold the names of witnesses or informants from the board, if the release of those names would be detrimental to the parties or to an investigation in progress.

(f) Notwithstanding any other provision of law, every state agency, upon receipt of a copy of a release signed in accordance with 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) by the applicant or other authorized representative, shall provide to the board or victim center the information necessary to complete the verification of an application filed pursuant to this chapter.

(g) The Department of Justice shall furnish, upon application of the board, all information necessary to verify the eligibility of any applicant for benefits pursuant to subdivision (d) of Section 13956, to recover any restitution fine or order obligations that are owed to the Restitution Fund or to any victim of crime, or to evaluate the status of any criminal disposition.

(h) A privilege is not waived under Section 912 of the Evidence Code by an applicant consenting to disclosure of an otherwise privileged communication if that disclosure is deemed necessary by the board for verification of the application.

(i) Any verification conducted pursuant to this section shall be subject to the time limits specified in Section 13958.

Article 3. Eligibility for Compensation

13955. Except as provided in Section 13956, a person shall be eligible for compensation when all of the following requirements are met:

(a) The person for whom compensation is being sought is any of the following:

(1) A victim.

(2) A derivative victim.

(3) A person who is entitled to reimbursement for funeral, burial, or crime scene cleanup expenses pursuant to subdivision (i) of Section 13957.

(b) Either of the following conditions is met:

(1) The crime occurred within the State of California, whether or not the victim is a resident of the State of California. This paragraph shall apply only during those time periods during which the board determines that federal funds are available to the State of California for the compensation of victims of crime.

(2) Whether or not the crime occurred within the State of California, the victim was any of the following:

(A) A resident of the State of California.

(B) A member of the military stationed in California.

(C) A family member living with a member of the military stationed in California.

(c) If compensation is being sought for a derivative victim, the derivative victim is a resident of California, or resident of another state, who is any of the following:

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

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

(3) At the time of the crime was 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 (1).

(4) Is another family member of the victim, including, but not limited to, the victim's fiancé or fianceé, and who witnessed the crime.

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

(d) The application is timely pursuant to Section 13953.

(e) (1) Except as provided in paragraph (2), the injury or death was a direct result of a crime.

(2) Notwithstanding paragraph (1), 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 chapter, except when the injury or death from such an act was any of the following:

(A) Intentionally inflicted through the use of a motor vehicle, aircraft, or water vehicle.

(B) Caused by a driver who fails to stop at the scene of an accident in violation of Section 20001 of the Vehicle Code.

(C) Caused by a person who is under the influence of any alcoholic beverage or drug.

(D) 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.

(E) Caused by a person who commits vehicular manslaughter in violation of subdivision (c) of Section 192 or Section 192.5 of the Penal Code.

(f) As a direct result of the crime, the victim or derivative victim sustained one or more of the following:

(1) Physical injury. The board may presume a child who has been the witness of a crime of domestic violence has sustained physical injury.

(2) Emotional injury and a threat of physical injury.

(3) Emotional injury, where the crime was a violation of any of the following provisions:

(A) 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.

(B) Section 270 of the Penal Code, where the emotional injury was a result of conduct other than a failure to pay child support, and criminal charges were filed.

(C) Section 261.5 of the Penal Code, and criminal charges were filed.

(D) Section 278 or 278.5 of the Penal Code, where the deprivation of custody as described in those sections has endured for 30 calendar days or more. For purposes of this paragraph, the child, and not the nonoffending parent or other caretaker, shall be deemed the victim.

(g) The injury or death has resulted or may result in pecuniary loss within the scope of compensation pursuant to Sections 13957 to 13957.9, inclusive.

13955.5. (a) Notwithstanding the residency requirement of subdivision (c) of Section 13955, a nonresident of the United States who meets the other requirements of that subdivision 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.

13956. Notwithstanding Section 13955, a person shall not be eligible for compensation under the following conditions:

(a) An application shall be denied if the board finds that the victim or, where compensation is sought by or on behalf of a derivative victim, either the victim or derivative victim, knowingly and willingly participated in the commission of the crime that resulted in the pecuniary loss for which compensation is being sought pursuant to this chapter. However, this subdivision shall not apply if the injury or death occurred

as a direct result of a crime committed in violation of Section 261, 262, or 273.5 of, or a crime of unlawful sexual intercourse with a minor committed in violation of subdivision (d) of Section 261.5 of, the Penal Code.

(b) (1) An application shall be denied if the board finds that the victim or, where compensation is sought by, or on behalf of, a derivative victim, either 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. However, in determining whether cooperation has been reasonable, the board shall consider the victim's or derivative victim's age, physical condition, and psychological state, cultural or linguistic barriers, any compelling health and safety concerns, 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 or the derivative victim or the derivative victim's family, and giving due consideration to the degree of cooperation of which the victim or derivative victim is capable in light of the presence of any of these factors.

(2) An application for a claim based on domestic violence may not be denied solely because no police report was made by the victim. The board shall adopt guidelines that allow the board to consider and approve applications for assistance based on domestic violence relying upon evidence other than a police report to establish that a domestic violence crime has occurred. Factors evidencing that a domestic violence crime has occurred may include, but are not limited to, medical records documenting injuries consistent with allegations of domestic violence, mental health records, or the fact that the victim has obtained a temporary or permanent restraining order, or all of these.

(c) An application for compensation 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 gives 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. The application of a derivative victim of domestic violence under the age of 18 years may not be denied on the basis of the denial of the victim's application under this subdivision.

(d) (1) Notwithstanding Section 13955, no person who is convicted of a felony may be granted compensation until that person has been discharged from probation or has been released from a correctional institution and has been discharged from parole, if any. In no case shall

compensation be granted to an applicant pursuant to this chapter during any period of time the applicant is held in a correctional institution.

(2) A person who has been convicted of a felony may apply for compensation pursuant to this chapter at any time, but the award of that compensation may not be considered until the applicant meets the requirements for compensation set forth in paragraph (1).

(3) Applications of victims who are not felons shall receive priority in the award of compensation over an application submitted by a felon who has met the requirements for compensation set forth in paragraph (1).

Article 4. Scope of Compensation

13957. (a) The board may grant for pecuniary loss, when the board determines it will best aid the person seeking compensation, as follows:

(1) Subject to the limitations set forth in Section 13957.2, reimburse the amount of medical or medical-related expenses incurred by the victim, 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) Subject to the limitations set forth in Section 13957.2, reimburse the amount of outpatient psychiatric, psychological, or other mental health counseling related expenses incurred by the victim or derivative victim, including peer counseling services provided by a rape crisis center as defined by Section 13837 of the Penal Code, and including family psychiatric, psychological, or mental health counseling 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, that became necessary as a direct result of the crime, subject to the following conditions:

(A) The following persons may be reimbursed for the expense of their outpatient mental health counseling in an amount not to exceed ten thousand dollars ($10,000):

(i) A victim.

(ii) A derivative victim who is the surviving parent, sibling, child, spouse, fiancé, or fianceé of a victim of a crime that directly resulted in the death of the victim.

(iii) A derivative victim, as described in paragraphs (1) to (4), inclusive, of subdivision (c) of Section 13955, who is the primary caretaker of a minor victim whose claim is not denied or reduced pursuant to Section 13956 in a total amount not to exceed ten thousand dollars ($10,000) for not more than two derivative victims.

(B) The following persons may be reimbursed for the expense of their outpatient mental health counseling in an amount not to exceed three thousand dollars ($3,000):

(i) A derivative victim not eligible for reimbursement pursuant to subparagraph (A), provided that mental health counseling of a derivative victim described in paragraph (5) of subdivision (c) of Section 13955, shall be reimbursed only if that counseling is necessary for the treatment of the victim.

(ii) A victim of a crime of unlawful sexual intercourse with a minor committed in violation of subdivision (d) of Section 261.5 of the Penal Code. 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 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 may not exceed three thousand dollars ($3,000) for mental health counseling expenses only.

(C) The board may reimburse a victim or derivative victim for outpatient mental health counseling in excess of that authorized by subparagraphs (A) or (B) or for inpatient psychiatric, psychological, or other mental health counseling if the claim is based on dire or exceptional circumstances that require more extensive treatment, as approved by the board.

(D) Expenses for psychiatric, psychological, or other mental health counseling related services may be reimbursed only if the services were provided by either of the following individuals:

(i) A person who would have been authorized to provide those services pursuant to the provisions of former Article 1 (commencing with Section 13959) as it read on January 1, 2002.

(ii) A person who is licensed by the state to provide those services, or who is properly supervised by a person who is so licensed, subject to the board's approval and subject to the limitations and restrictions the board may impose.

(3) Reimburse the expenses of nonmedical remedial care and treatment rendered in accordance with a religious method of healing recognized by state law.

(4) Subject to the limitations set forth in Section 13957.5, authorize compensation equal to the loss of income or loss of support, or both, that a victim or derivative victim incurs as a direct result of the victim's or derivative victim's injury or the victim's death. If the victim or derivative victim requests that the board give priority to reimbursement of loss of income or support, the board may not pay medical expenses, or mental health counseling expenses, except upon the request of the victim or derivative victim or after determining that payment of these expenses

will not decrease the funds available for payment of loss of income or support.

(5) Authorize a cash payment to or on behalf of the victim for job retraining or similar employment-oriented services.

(6) Reimburse the expense for installing or increasing residential security, not to exceed one thousand dollars ($1,000), with respect to a crime that occurred in the victim's residence, 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. Installing or increasing residential security may include, but need not be limited to, both of the following:

(A) Home security device or system.

(B) Replacing or increasing the number of locks.

(7) Reimburse the expense of renovating or retrofitting a victim's residence or a vehicle, or both, to make the residence, the vehicle, or both, accessible or the vehicle operational by a victim upon verification that the expense is medically necessary for a victim who is permanently disabled as a direct result of the crime, whether the disability is partial or total.

(8) Authorize a cash payment or reimbursement not to exceed two thousand dollars ($2,000) to a victim 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. When a relocation payment or reimbursement is provided to a victim of sexual assault or domestic violence and the identity of the offender is known to the victim, the victim shall agree not to inform the offender of the location of the victim's new residence and not to allow the offender on the premises at any time, or shall agree to seek a restraining order against the offender. The cash payment or reimbursement made under this subdivision 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:

(A) The crime occurs more than three years from the date of the crime giving rise to the initial relocation cash payment or reimbursement.

(B) The crime does not involve the same offender.

(9) When a victim dies as a 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 any of the following expenses:

(A) The medical expenses incurred as a direct result of the crime in an amount not to exceed the rates or limitations established by the board.

(B) When the crime occurs in a residence, 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.

(C) The funeral and burial expenses incurred as a direct result of the crime, not to exceed seven thousand five hundred dollars ($7,500).

(b) The total award to or on behalf of each victim or derivative victim may not exceed thirty-five thousand dollars ($35,000), except that this amount may be increased to seventy thousand dollars ($70,000) if federal funds for that increase are available.

13957.2. (a) The board may establish maximum rates and service limitations for reimbursement of medical and medical-related services and for mental health and counseling services. The adoption, amendment, and repeal of these service limitations and 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 service limitations and maximum rates shall be filed with the Secretary of State upon adoption by the board. A provider who accepts payment from the program for a service shall accept the program's rates as payment in full and shall not accept any payment on account of the service from any other source if the total of payments accepted would exceed the maximum rate set by the board for that service. To ensure 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.

(b) The board may request an independent examination and report from any provider of medical or medical-related services or psychological or psychiatric treatment or mental health counseling services, if it believes there is a reasonable basis for requesting an additional evaluation. The victim or derivative victim shall be notified of the name of the provider who is to perform the evaluation within 30 calendar days of that determination. 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 requested, payments shall not be discontinued prior to completion of the reevaluation.

(c) Reimbursement for any medical or medical-related services shall, if the 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 may 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 will be discontinued, the board shall notify the provider of their discontinuance within 30 calendar days of its determination.

13957.5. (a) In authorizing compensation for loss of income and support pursuant to paragraph (4) of subdivision (a) of Section 13957, the board may take any of the following actions:

(1) Compensate the victim for loss of income directly resulting from the injury, except that loss of income may not be paid by the board for more than five years following the crime, unless the victim is disabled as defined in Section 416(i) of Title 42 of the United States Code, as a direct result of the injury.

(2) Compensate an adult derivative victim for loss of income, subject to all of the following:

(A) The derivative victim is the parent or legal guardian of a victim, who at the time of the crime was under the age of 18 years and is hospitalized as a direct result of the crime.

(B) The minor victim's treating physician certifies in writing that the presence of the victim's parent or legal guardian at the hospital is necessary for the treatment of the victim.

(C) Reimbursement for loss of income under this paragraph may not exceed the total value of the income that would have been earned by the adult derivative victim during a 30-day period.

(3) Compensate an adult derivative victim for loss of income, subject to all of the following:

(A) The derivative victim is the parent or legal guardian of a victim who at the time of the crime was under the age of 18 years.

(B) The victim died as a direct result of the crime.

(C) The board shall pay for loss of income under this paragraph for not more than 30 days from the date of the victim's death.

(4) Compensate a derivative victim who was legally dependent on the victim at the time of the crime for the loss of support incurred by that person as a direct result of the crime, subject to both of the following:

(A) Loss of support shall be paid by the board for income lost by an adult for a period up to, but not more than, five years following the date of the crime.

(B) Loss of support shall not be paid by the board on behalf of a minor for a period beyond the child's attaining the age of 18 years.

(b) The total amount payable to all derivative victims pursuant to this section as the result of one crime may not exceed seventy thousand dollars ($70,000).

13957.7. (a) No reimbursement may be made for any expense that is submitted more than three years after it is incurred by the victim or derivative victim. However, 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.

(b) Compensation made pursuant to this chapter may be on a one-time or periodic basis. If periodic, the board may increase, reduce, or terminate the amount of compensation according to the applicant's need, subject to the maximum limits provided in this chapter.

(c) (1) The board may authorize direct payment to a provider of services that are reimbursable pursuant to this chapter and may make those payments prior to verification. However, the board may not, without good cause, authorize a direct payment to a provider over the objection of the victim or derivative victim.

(2) Reimbursement on the initial claim for any psychological, psychiatric, or mental health counseling services 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.

(d) Payments for peer counseling services provided by a rape crisis center may not exceed fifteen dollars ($15) for each hour of services provided. Those services shall be limited to in-person counseling for a period not to exceed 10 weeks plus one series of facilitated support group counseling sessions.

(e) The board shall develop procedures to ensure that a victim is using compensation for job retraining or relocation only for its intended purposes. The procedures may include, but need not be limited to, requiring copies of receipts, agreements, or other documents as requested, or developing a method for direct payment.

(f) Compensation granted pursuant to this chapter shall not disqualify an otherwise eligible applicant from participation in any other public assistance program.

(g) 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 subdivision. Payments under this subdivision shall be in addition to any amount authorized or ordered under subdivision (b) of Section 13960. An attorney may not charge, demand, receive, or collect any amount for services rendered in connection with any proceedings under this chapter except as awarded under this chapter.

(h) A private nonprofit agency shall be reimbursed for its 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 may not exceed the maximum reimbursement rates set by the board and may be made only to the extent that the victim otherwise qualifies for compensation under this chapter and that other reimbursement or direct subsidies are not available to serve the victim.

13957.9. (a) Notwithstanding Section 13954, the board shall develop a simplified and expedited procedure for paying claims of a qualified provider of mental health services.

(b) A simplified and expedited procedure for paying claims specified in subdivision (a) shall include all of the following:

(1) An agreement by the provider to subject its claims to audit procedures established by the board and to request payment only for qualified services.

(2) An agreement by the board to pay claims on a regular and timely basis to a qualified provider for services without requiring further documentation beyond that required to initially qualify the claim.

(3) Additional methods of simplifying the claims process as agreed upon between the board and the qualified provider.

(c) Simplified and expedited procedures for mental health services may be instituted when both of the following conditions are met:

(1) The board has determined that the crime has occurred and that the victim qualifies for compensation pursuant to this chapter.

(2) Services to the victim or derivative victim, or both, are being provided by a qualified provider.

(d) A nonprofit agency may apply to the board for a determination that the nonprofit agency is a qualified provider for purposes of this section. The board shall approve or reject an application from a qualified provider for participation in an agreement pursuant to this section within 90 days of receipt of a complete application as required by the board.

(e) An agreement made pursuant to this section shall not be deemed to be a contract subject to the requirements of Part 2 (commencing with Section 10100) of Division 2 of the Public Contract Code.

(f) For purposes of this section, ''qualified provider'' means a nonprofit agency with extensive experience in providing mental health services and that has utilized reimbursement from the Restitution Fund at a significant level on a regular and constant basis. Upon request of a nonprofit agency, the board shall determine if the nonprofit agency is a qualified provider for purposes of this section.

13958. The board shall approve or deny applications, based on recommendations of the board staff, within an average of 90 calendar

days and no later than 180 calendar days of acceptance by the board or victim center.

(a) If the board does not meet the 90-day average standard prescribed in this subdivision, the board shall, thereafter, report to the Legislature, on a quarterly basis, its progress and its current average time of processing applications. These quarterly reports shall continue until the board meets the 90-day average standard for two consecutive quarters.

(b) If the board fails to approve or deny an individual application within 180 days of the date it is accepted, pursuant to this subdivision, the board shall advise the applicant and his or her representative, in writing, of the reason for the failure to approve or deny the application.

Article 5. Hearings and Judicial Review

13959. (a) The board shall grant a hearing to an applicant who believes he or she is entitled to compensation pursuant to this chapter to contest a staff recommendation to deny compensation in whole or in part.

(b) The board shall notify the applicant not less than 10 days prior to the date of the hearing. Notwithstanding Section 11123, if the application that the board is considering involves either a crime against a minor, a crime of sexual assault, or a crime of domestic violence, the board may exclude from the hearing all persons other than board members and members of its staff, the applicant for benefits, a minor applicant's parents or guardians, the applicant's representative, any witnesses, and other persons of the applicant's choice to provide assistance to the applicant during the hearing. However, the board may not exclude persons from the hearing if the applicant or applicant's representative requests that the hearing be open to the public.

(c) At the hearing, the person seeking compensation shall have the burden of establishing, by a preponderance of the evidence, the elements for eligibility under Section 13955.

(d) Except as otherwise provided by law, in making determinations of eligibility for compensation and in deciding upon the amount of compensation, the board shall apply the law in effect as of the date an application was submitted.

(e) The hearing shall be informal and need not be conducted according to the technical rules relating to evidence and witnesses. The board may rely on any relevant evidence if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule that might make improper the admission of the evidence over objection in a civil action. The board may rely on written reports prepared for the board, or other information received, from public

agencies responsible for investigating the crime. If the applicant or the applicant's representative chooses not to appear at the hearing, the board may act solely upon the application for compensation, the staff's report, and other evidence that appears in the record.

(f) Hearings shall be held in various locations with the frequency necessary to provide for the speedy adjudication of the applications. If the applicant's presence is required at the hearing, the board shall schedule the applicant's hearing in as convenient a location as possible.

(g) The board may delegate the hearing of applications to hearing officers.

(h) The decisions of the board shall be in writing. Copies of the decisions shall be delivered to the applicant or to his or her representative personally or sent to them by mail.

(i) The board may order a reconsideration of all or part of a decision on its own motion or on written request of the applicant. The board may not grant more than one such request with respect to any one decision on any application for compensation. The board may not consider any such request filed with the board more than 30 calendar days after the personal delivery or 60 calendar days after the mailing of the original decision.

13960. (a) Judicial review of a final decision made pursuant to this chapter may be had by filing a petition for a writ of mandate in accordance with Section 1094.5 of the Code of Civil Procedure. The right to petition shall not be affected by the failure to seek reconsideration before the board. The petition shall be filed as follows:

(1) Where no request for reconsideration is made, within 30 calendar days of personal delivery or within 60 calendar days of the mailing of the board's decision on the application for compensation.

(2) Where a timely request for reconsideration is filed and rejected by the board, within 30 calendar days of personal delivery or within 60 calendar days of the mailing of the notice of rejection.

(3) Where a timely request for reconsideration is filed and granted by the board, or reconsideration is ordered by the board, within 30 calendar days of personal delivery or within 60 calendar days of the mailing of the final decision on the reconsidered application.

(b) (1) In an action resulting in the issuance of a writ of mandate pursuant to this section the court may order the board to pay to the applicant's attorney reasonable attorney's fees or one thousand dollars ($1,000), whichever is less. If action is taken by the board in favor of the applicant in response to the filing of the petition, but prior to a judicial determination, the board shall pay the applicant's costs of filing the petition.

(2) In case of appeal by the board of a decision on the petition for writ of mandate that results in a decision in favor of the applicant, the court

may order the board to pay to the applicant's attorney reasonable attorney fees.

(3) Nothing in this section shall be construed to prohibit or limit an award of attorney's fees pursuant to Section 1021.5 of the Code of Civil Procedure.

Article 6. Administration

13962. (a) The board shall publicize through the board, law enforcement agencies, victim centers, hospitals, medical, mental health or other counseling service providers, and other public or private agencies, the existence of the program established pursuant to this chapter, including the procedures for obtaining compensation under the program.

(b) It shall be the duty of every local law enforcement agency to inform crime victims of the provisions of this chapter, of the existence of victim centers, and in counties where no victim center exists, to provide application forms to victims who desire to seek compensation pursuant to this chapter. The board shall provide application forms and all other documents that local law enforcement agencies and victim centers may require to comply with this section. The board, in cooperation with victim centers, shall set standards to be followed by local law enforcement agencies for this purpose and may require them to file with the board a description of the procedures adopted by each agency to comply with the standards.

13963. (a) The board shall be subrogated to the rights of the recipient to the extent of any compensation granted by the board. The subrogation rights shall be against the perpetrator of the crime or any person liable for the losses suffered as a direct result of the crime which was the basis for receipt of compensation, including an insurer held liable in accordance with the provision of a policy of insurance issued pursuant to Section 11580.2 of the Insurance Code.

(b) The board shall also be entitled to a lien on any judgment, award, or settlement in favor of or on behalf of the recipient for losses suffered as a direct result of the crime that was the basis for receipt of compensation in the amount of the compensation granted by the board. The board may recover this amount in a separate action, or may intervene in an action brought by or on behalf of the recipient. If a claim is filed within one year of the date of recovery, the board shall pay 25 percent of the amount of the recovery that is subject to a lien on the judgment, award, or settlement, to the recipient responsible for recovery thereof from the perpetrator of the crime, provided that the total amount of the lien is recovered. The remaining 75 percent of the amount, and any

amount not claimed within one year pursuant to this section, shall be deposited in the Restitution Fund.

(c) The board may compromise or settle and release any lien pursuant to this chapter if it is found that the action is in the best interest of the state or the collection would cause undue hardship upon the recipient. Repayment obligations to the Restitution Fund shall be enforceable as a summary judgment.

(d) No judgment, award, or settlement in any action or claim by a recipient, where the board has an interest, shall be satisfied without first giving the board notice and a reasonable opportunity to perfect and satisfy the lien. The notice shall be given to the board in Sacramento except in cases where the board specifies that the notice shall be given otherwise. The notice shall include the complete terms of the award, settlement, or judgment, and the name and address of any insurer directly or indirectly providing for the satisfaction.

(e) (1) If the recipient brings an action or asserts a claim for damages against the person or persons liable for the injury or death giving rise to an award by the board under this chapter, notice of the institution of legal proceedings, notice of all hearings, conferences, and proceedings, and notice of settlement shall be given to the board in Sacramento except in cases where the board specifies that notice shall be given to the Attorney General. Notice of the institution of legal proceedings shall be given to the board within 30 days of filing the action. All notices shall be given by the attorney employed to bring the action for damages or by the recipient if no attorney is employed.

(2) Notice shall include all of the following:

(A) Names of all parties to the claim or action.

(B) The address of all parties to the claim or action except for those persons represented by attorneys and in that case the name of the party and the name and address of the attorney.

(C) The nature of the claim asserted or action brought.

(D) In the case of actions before courts or administrative agencies, the full title of the case including the identity of the court or agency, the names of the parties, and the case or docket number.

(3) When the recipient or his or her attorney has reason to believe that a person from whom damages are sought is receiving a defense provided in whole or in part by an insurer, or is insured for the injury caused to the recipient, notice shall include a statement of that fact and the name and address of the insurer. Upon request of the board, a person obligated to provide notice shall provide the board with a copy of the current written claim or complaint.

(f) The board shall pay the county probation department or other county agency responsible for collection of funds owed to the Restitution Fund under Section 13967, as operative on or before

September 28, 1994, Section 1202.4 of the Penal Code, Section 1203.04 of the Penal Code, as operative on or before August 2, 1995, or Section 730.6 of the Welfare and Institutions Code, 10 percent of the funds so owed and collected by the county agency and deposited in the Restitution Fund. This payment shall be made only when the funds are deposited in the Restitution Fund within 45 days of the end of the month in which the funds are collected. Receiving 10 percent of the moneys collected as being owed to the Restitution Fund shall be considered an incentive for collection efforts and shall be used for furthering these collection efforts. The 10-percent rebates shall be used to augment the budgets for the county agencies responsible for collection of funds owed to the Restitution Fund, as provided in Section 13967, as operative on or before September 28, 1994, Section 1202.4 of the Penal Code, Section 1203.04 of the Penal Code, operative on or before August 2, 1995, or Section 730.6 of the Welfare and Institutions Code. The 10-percent rebates shall not be used to supplant county funding.

(g) In the event of judgment or award in a suit or claim against a third party or insurer, if the action or claim is prosecuted by the recipient alone, the court or agency shall first order paid from any judgment or award the reasonable litigation expenses incurred in preparation and prosecution of the action or claim, together with reasonable attorney's fees when an attorney has been retained. After payment of the expenses and attorney's fees, the court or agency shall, on the application of the board, allow as a lien against the amount of the judgment or award, the amount of the compensation granted by the board to the recipient for losses sustained as a result of the same incident upon which the settlement, award, or judgment is based.

(h) For purposes of this section, ''recipient'' means any person who has received compensation or will be provided compensation pursuant to this chapter, including the victim's guardian, conservator or other personal representative, estate, and survivors.

13964. (a) Claims under this chapter shall be paid from the Restitution Fund.

(b) Notwithstanding Section 13340, the proceeds in the Restitution Fund are hereby continuously appropriated to the board, without regard to fiscal years, for the purposes of this chapter. However, the funds appropriated pursuant to this section for administrative costs of the board shall be subject to annual review through the State Budget process.

(c) A sum not to exceed 15 percent of the amount appropriated annually to pay claims pursuant to this chapter may be withdrawn from the Restitution Fund, to be used as a revolving fund by the board for the payment of emergency awards pursuant to Section 13961.

13965. (a) A person who has been overpaid or on whose behalf any provider or other person has been overpaid under this chapter is liable for that amount unless both of the following facts exist:

(1) The overpayment was not due to fraud, misrepresentation, or willful nondisclosure on the part of the recipient.

(2) The overpayment was received without fault on the part of the recipient, and its recovery would be against equity and good conscience.

(b) All overpayments exceeding two thousand dollars ($2,000) shall be reported to the Legislature pursuant to Section 13928 and the relief from liability described in subdivision (a) shall be subject to legislative approval.

13966. The board may do all of the following to recover moneys owed to the Restitution Fund:

(a) File a civil action against the liable person for the recovery of the amount of moneys owed. This action shall be filed within one year of either of the following events, or within three years of either of the following events if the liable person was overpaid benefits due to fraud, misrepresentation, or nondisclosure as described in paragraph (1) of subdivision (a) of Section 13965:

(1) The mailing or personal service of the notice of the moneys owed if the person affected does not file an appeal with the board or person designated by the board.

(2) The mailing of the decision of the board if the person affected does not initiate a further appeal.

(b) (1) Initiate proceedings for a summary judgment against the liable person. However, this subdivision shall apply only where the board has found, pursuant to Section 13965, that the overpayment may not be waived. The board may, not later than three years after the overpayment became final, file with the clerk of the proper court in the county from which the overpayment of benefits was paid or in the county in which the claimant resides, a certificate containing all of the following:

(A) The amount due, plus interest from the date that the initial determination of the moneys owed was made.

(B) A statement that the board has complied with all the provisions of this chapter prior to the filing of the certificate.

(C) A request that the judgment be entered against the liable person in the amount set forth in the certificate.

(2) The clerk, immediately upon the filing of the certificate, shall enter a judgment for the state against the liable person in the amount set forth in the certificate.

13967. (a) (1) The Governor's Budget shall specify the estimated amount in the Restitution Fund that is in excess of the amount needed

to pay claims pursuant to this chapter, to pay administrative costs for increasing restitution funds, and to maintain a prudent reserve.

(2) It is the intent of the Legislature that, notwithstanding Section 13963, funds be appropriated in the annual Budget Act to the State Department of Mental Health from those funds that are determined to be in excess of the amount needed pursuant to paragraph (1), for the purposes of this section.

(b) Notwithstanding any other provision of law, moneys in the Restitution Fund appropriated in the annual Budget Act pursuant to subdivision (a) may be used to fund programs and activities operated by the State Department of Mental Health, that address the problem of unequal protection for, and unequal services to, crime victims with disabilities.

(c) Programs and activities that may be funded pursuant to this section include all of the following, as they relate to persons with disabilities:

(1) Identification of crime victims with disabilities.

(2) Crime and violence prevention.

(3) Improvement of access to victim's support and compensation.

(4) Planning and activities by service provider organizations to address the reduction of crime.

(5) Establishment of programs for personal safety, planning, and training.

(6) Public information efforts.

(7) Coordination with other federal and state agencies.

(8) Training of staff.

(9) Programs and activities that facilitate the building of partnerships between advocates and service providers and the criminal justice system to assist crime victims with disabilities to identify and report crime, and assist them in navigating the criminal justice system; secure victim assistance for victims with disabilities; and assist the criminal justice system in investigating, prosecuting, and trying those cases.

(10) Any other program or activity related to crime victims with disabilities.

(d) Moneys appropriated from the Restitution Fund may also be used for the evaluation of the effectiveness of the programs and activities funded pursuant to this section.

Article 7. Miscellaneous

13968. (a) The board shall conduct a pilot program that entitles a victim or derivative victim to be reimbursed from the Restitution Fund for grief, mourning, and bereavement services in cases of death or severe

trauma, except that the services shall not include mental health services for which a state license is required.

(b) Services under this section shall be rendered by a person certified as a child life specialist by the National Child Life Council, who has at least five years of professional experience in the field of child life, as defined by the council. These services shall be performed under the supervision of a court, hospital, physician and surgeon, licensed psychotherapist included in Section 1010 of the Evidence Code, community-based organization, or county. The board may only include in the program a certified child life specialist who has been determined by a current employer in California or a California licensing entity not to have a criminal history that would prevent that employment or the issuance of a license. If neither determination has occurred, the board shall secure from the Department of Justice a criminal record to determine whether the applicant would be disqualified from employment pursuant to Sections 45122.1 and 45123 of the Education Code, and for these purposes the board may make the determinations required by that section. The board may charge a certified child life specialist a fee for the actual cost of fingerprinting and obtaining the criminal history information required by this section.

(c) The program shall terminate on January 1, 2004. The board shall evaluate the program and, notwithstanding Section 7550.5, shall report its conclusions and recommendations to the Legislature by January 31, 2003. The board may consider whether child life specialists should be licensed by a state agency in making its recommendations to the Legislature.

(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.

13969. (a) The board may provide reimbursements, which cumulatively may not exceed a total of two million five hundred seventy-five thousand dollars ($2,575,000), to county boards of supervisors, upon their request, for either of the following purposes:

(1) Providing group mental health counseling for those suffering trauma as a result of terrorism, as defined in Section 2332a or 2332b of Title 18 of the United States Code.

(2) Providing technical assistance in the promotion of tolerance for individuals whose national origin or religion may be targets of discrimination as a result of terrorism as described in this subdivision.

(b) This section shall remain in effect only until January 1, 2004, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2004, deletes or extends that date.

13969.2. (a) The board may expand the scope of compensation to include derivative victims who incur a pecuniary loss as a direct result

of any of the four terrorist attacks that occurred at the World Trade Center and the Pentagon, and in Pennsylvania, on September 11, 2001, as follows:

(1) A California resident derivative victim, as defined in subdivision (c) of Section 13951, when the victim has been injured or killed in a terrorist attack described in this section, regardless of whether or not the victim is or was a resident of the state.

(2) A California resident grandparent or grandchild of a victim injured or killed in a terrorist attack described in this section, regardless of whether or not the victim is or was a resident of the state.

(3) A California resident mother-in-law or father-in-law of a victim injured or killed in a terrorist attack described in this section, regardless of whether or not the victim is or was a resident of the state.

(4) As determined by the board, any other California resident family member of a victim injured or killed in a terrorist attack described in this section, regardless of whether or not the victim is or was a resident of the state.

(b) This section shall remain in effect only until January 1, 2004, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2004, deletes or extends that date.

13969.5. (a) The board may provide reimbursement in an amount not to exceed ten thousand dollars ($10,000) each, for the expense of mental health counseling for members of California trauma or search and rescue teams that were dispatched to the scene of any of the four terrorist attacks that occurred at the World Trade Center and the Pentagon, and in Pennsylvania, on September 11, 2001.

(b) This section shall remain in effect only until January 1, 2004, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2004, deletes or extends that date.

13969.7. (a) The board may make a one-time allocation of one million dollars ($1,000,000) to the victim compensation program in the State of New York to aid that state in compensating victims of the terrorist attack on the World Trade Center that occurred on September 11, 2001.

(b) The Legislature finds and declares that the provision of funds for victim compensation in the State of New York as described in subdivision (a) serves a public purpose and does not constitute a gift of public funds within the meaning of Section 6 of Article XVI of the California Constitution.

(c) This section shall remain in effect only until January 1, 2004, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2004, deletes or extends that date.

SEC. 3. Section 13951 is added to the Government Code, to read:

13951. As used in this chapter, the following definitions shall apply:

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

(b) (1) ''Crime'' means a crime or public offense, wherever it may take place, that would constitute a misdemeanor or a felony if the crime had been committed in California by a competent adult.

(2) ''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.

(c) ''Derivative victim'' means an individual who sustains pecuniary loss as a result of injury or death to a victim.

(d) ''Law enforcement'' means every district attorney, municipal police department, sheriff's department, district attorney's office, county probation department, and social services agency, the Department of Justice, the Department of Corrections, the Department of the Youth Authority, the Department of the California Highway Patrol, the police department of any campus of the University of California, California State University, or community college, and every agency of the State of California expressly authorized by statute to investigate or prosecute law violators.

(e) ''Pecuniary loss'' means an economic loss or expense resulting from an injury or death to a victim of crime that has not been and will not be reimbursed from any other source.

(f) ''Peer counseling'' means counseling offered by a provider of mental health counseling services who has completed a specialized course in rape crisis or domestic violence counseling skills development, participates in continuing education in rape crisis or domestic violence counseling skills development, and provides rape crisis or domestic violence counseling within the State of California. In the case of a domestic violence peer counselor, the peer counselor shall meet the minimum training requirements for a domestic violence counselor described in Section 1037.1 of the Evidence Code, regardless of place of employment.

(g) ''Victim'' means an individual who sustains injury or death as a direct result of a crime as specified in subdivision (e) of Section 13955.

(h) ''Victim center'' means a victim and witness assistance center that receives funds pursuant to Section 13835.2 of the Penal Code.

SEC. 4. Section 13955 is added to the Government Code, to read:

13955. Except as provided in Section 13956, a person shall be eligible for compensation when all of the following requirements are met:

(a) The person for whom compensation is being sought is any of the following:

(1) A victim.

(2) A derivative victim.

(3) A person who is entitled to reimbursement for funeral, burial, or crime scene cleanup expenses pursuant to subdivision (i) of Section 13957.

(b) Either of the following conditions is met:

(1) The crime occurred within the State of California, whether or not the victim is a resident of the State of California. This paragraph shall apply only during those time periods during which the board determines that federal funds are available to the State of California for the compensation of victims of crime.

(2) Whether or not the crime occurred within the State of California, the victim was any of the following:

(A) A resident of the State of California.

(B) A member of the military stationed in California.

(C) A family member living with a member of the military stationed in California.

(c) If compensation is being sought for a derivative victim, the derivative victim is a resident of California, or resident of another state, who is any of the following:

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

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

(3) At the time of the crime was 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 paragraph (1).

(4) Is another family member of the victim, including, but not limited to, the victim's fiancé or fianceé, and who witnessed the crime.

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

(d) The application is timely pursuant to Section 13953.

(e) (1) Except as provided in paragraph (2), the injury or death was a direct result of a crime.

(2) Notwithstanding paragraph (1), 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 chapter, except when the injury or death from such an act was any of the following:

(A) Intentionally inflicted through the use of a motor vehicle, aircraft, or water vehicle.

(B) Caused by a driver who fails to stop at the scene of an accident in violation of Section 20001 of the Vehicle Code.

(C) Caused by a person who is under the influence of any alcoholic beverage or drug.

(D) 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.

(E) Caused by a person who commits vehicular manslaughter in violation of subdivision (c) of Section 192 or Section 192.5 of the Penal Code.

(f) As a direct result of the crime, the victim or derivative victim sustained one or more of the following:

(1) Physical injury. The board may presume a child who has been the witness of a crime of domestic violence has sustained physical injury. A child who resides in a home where a crime or crimes of domestic violence have occurred may be presumed by the board to have sustained physical injury, regardless of whether the child has witnessed the crime.

(2) Emotional injury and a threat of physical injury.

(3) Emotional injury, where the crime was a violation of any of the following provisions:

(A) 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.

(B) Section 270 of the Penal Code, where the emotional injury was a result of conduct other than a failure to pay child support, and criminal charges were filed.

(C) Section 261.5 of the Penal Code, and criminal charges were filed.

(D) Section 278 or 278.5 of the Penal Code, where the deprivation of custody as described in those sections has endured for 30 calendar days or more. For purposes of this paragraph, the child, and not the nonoffending parent or other caretaker, shall be deemed the victim.

(g) The injury or death has resulted or may result in pecuniary loss within the scope of compensation pursuant to Sections 13957 to 13957.9, inclusive.

SEC. 5. Section 13957 is added to the Government Code, to read:

13957. (a) The board may grant for pecuniary loss, when the board determines it will best aid the person seeking compensation, as follows:

(1) Subject to the limitations set forth in Section 13957.2, reimburse the amount of medical or medical-related expenses incurred by the victim, 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) Subject to the limitations set forth in Section 13957.2, reimburse the amount of outpatient psychiatric, psychological, or other mental health counseling related expenses incurred by the victim or derivative victim, including peer counseling services provided by a rape crisis center as defined by Section 13837 of the Penal Code or by a domestic violence peer counselor described in subdivision (f) of Section 13951,

and including family psychiatric, psychological, or mental health counseling 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, that became necessary as a direct result of the crime, subject to the following conditions:

(A) The following persons may be reimbursed for the expense of their outpatient mental health counseling in an amount not to exceed ten thousand dollars ($10,000):

(i) A victim.

(ii) A derivative victim who is the surviving parent, sibling, child, spouse, fiancé, or fianceé of a victim of a crime that directly resulted in the death of the victim.

(iii) A derivative victim, as described in paragraphs (1) to (4), inclusive, of subdivision (c) of Section 13955, who is the primary caretaker of a minor victim whose claim is not denied or reduced pursuant to Section 13956 in a total amount not to exceed ten thousand dollars ($10,000) for not more than two derivative victims.

(B) The following persons may be reimbursed for the expense of their outpatient mental health counseling in an amount not to exceed three thousand dollars ($3,000):

(i) A derivative victim not eligible for reimbursement pursuant to subparagraph (A), provided that mental health counseling of a derivative victim described in paragraph (5) of subdivision (c) of Section 13955, shall be reimbursed only if that counseling is necessary for the treatment of the victim.

(ii) A victim of a crime of unlawful sexual intercourse with a minor committed in violation of subdivision (d) of Section 261.5 of the Penal Code. 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 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 may not exceed three thousand dollars ($3,000) for mental health counseling expenses only.

(C) The board may reimburse a victim or derivative victim for outpatient mental health counseling in excess of that authorized by subparagraphs (A) or (B) or for inpatient psychiatric, psychological, or other mental health counseling if the claim is based on dire or exceptional circumstances that require more extensive treatment, as approved by the board.

(D) Expenses for psychiatric, psychological, or other mental health counseling related services may be reimbursed only if the services were provided by either of the following individuals:

(i) A person who would have been authorized to provide those services pursuant to the provisions of former Article 1 (commencing with Section 13959) as it read on January 1, 2002.

(ii) A person who is licensed by the state to provide those services, or who is properly supervised by a person who is so licensed, subject to the board's approval and subject to the limitations and restrictions the board may impose.

(3) Reimburse the expenses of nonmedical remedial care and treatment rendered in accordance with a religious method of healing recognized by state law.

(4) Subject to the limitations set forth in Section 13957.5, authorize compensation equal to the loss of income or loss of support, or both, that a victim or derivative victim incurs as a direct result of the victim's or derivative victim's injury or the victim's death. If the victim or derivative victim requests that the board give priority to reimbursement of loss of income or support, the board may not pay medical expenses, or mental health counseling expenses, except upon the request of the victim or derivative victim or after determining that payment of these expenses will not decrease the funds available for payment of loss of income or support.

(5) Authorize a cash payment to or on behalf of the victim for job retraining or similar employment-oriented services.

(6) Reimburse the expense for installing or increasing residential security, not to exceed one thousand dollars ($1,000), with respect to a crime that occurred in the victim's residence, 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. Installing or increasing residential security may include, but need not be limited to, both of the following:

(A) Home security device or system.

(B) Replacing or increasing the number of locks.

(7) Reimburse the expense of renovating or retrofitting a victim's residence or a vehicle, or both, to make the residence, the vehicle, or both, accessible or the vehicle operational by a victim upon verification that the expense is medically necessary for a victim who is permanently disabled as a direct result of the crime, whether the disability is partial or total.

(8) Authorize a cash payment or reimbursement not to exceed two thousand dollars ($2,000) to a victim 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. When a relocation payment or reimbursement is provided to a victim of sexual assault or domestic violence and the identity of the offender is known to

the victim, the victim shall agree not to inform the offender of the location of the victim's new residence and not to allow the offender on the premises at any time, or shall agree to seek a restraining order against the offender. The cash payment or reimbursement made under this subdivision 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:

(A) The crime occurs more than three years from the date of the crime giving rise to the initial relocation cash payment or reimbursement.

(B) The crime does not involve the same offender.

(9) When a victim dies as a 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 any of the following expenses:

(A) The medical, funeral, or burial expenses incurred as a direct result of the crime in an amount not to exceed the rates or limitations established by the board.

(B) When the crime occurs in a residence, 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) The total award to or on behalf of each victim or derivative victim may not exceed thirty-five thousand dollars ($35,000), except that this amount may be increased to seventy thousand dollars ($70,000) if federal funds for that increase are available.

SEC. 6. Section 13957.7 is added to the Government Code, to read:

13957.7. (a) No reimbursement may be made for any expense that is submitted more than three years after it is incurred by the victim or derivative victim. However, 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.

(b) Compensation made pursuant to this chapter may be on a one-time or periodic basis. If periodic, the board may increase, reduce, or terminate the amount of compensation according to the applicant's need, subject to the maximum limits provided in this chapter.

(c) (1) The board may authorize direct payment to a provider of services that are reimbursable pursuant to this chapter and may make those payments prior to verification. However, the board may not,

without good cause, authorize a direct payment to a provider over the objection of the victim or derivative victim.

(2) Reimbursement on the initial claim for any psychological, psychiatric, or mental health counseling services 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.

(d) (1) Payments for peer counseling services provided by a rape crisis center or for domestic violence peer counseling services provided by an organization that provides domestic violence counseling services, shall be established by the board at an hourly rate. These services shall be limited to in-person counseling for a period not to exceed 10 weeks plus one series of facilitated support group counseling sessions.

(2) A rape crisis peer counselor or domestic violence peer counselor who is funded in whole by federal funds shall not be eligible to receive reimbursement under this chapter.

(e) The board shall develop procedures to ensure that a victim is using compensation for job retraining or relocation only for its intended purposes. The procedures may include, but need not be limited to, requiring copies of receipts, agreements, or other documents as requested, or developing a method for direct payment.

(f) Compensation granted pursuant to this chapter shall not disqualify an otherwise eligible applicant from participation in any other public assistance program.

(g) 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 subdivision. Payments under this subdivision shall be in addition to any amount authorized or ordered under subdivision (b) of Section 13960. An attorney may not charge, demand, receive, or collect any amount for services rendered in connection with any proceedings under this chapter except as awarded under this chapter.

(h) A private nonprofit agency shall be reimbursed for its 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 may not exceed the maximum reimbursement rates set by the board and may be made only to the extent that the victim otherwise qualifies for compensation under this chapter and that other reimbursement or direct subsidies are not available to serve the victim.

SEC. 7. Section 13957.7 is added to the Government Code, to read:

13957.7. (a) No reimbursement may be made for any expense that is submitted more than three years after it is incurred by the victim or derivative victim. However, 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.

(b) Compensation made pursuant to this chapter may be on a one-time or periodic basis. If periodic, the board may increase, reduce, or terminate the amount of compensation according to the applicant's need, subject to the maximum limits provided in this chapter.

(c) (1) The board may authorize direct payment to a provider of services that are reimbursable pursuant to this chapter and may make those payments prior to verification. However, the board may not, without good cause, authorize a direct payment to a provider over the objection of the victim or derivative victim.

(2) Reimbursement on the initial claim for any psychological, psychiatric, or mental health counseling services 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.

(d) Payments for peer counseling services provided by a rape crisis center may not exceed fifteen dollars ($15) for each hour of services provided. Those services shall be limited to in-person counseling for a period not to exceed 10 weeks plus one series of facilitated support group counseling sessions.

(e) The board shall develop procedures to ensure that a victim is using compensation for job retraining or relocation only for its intended purposes. The procedures may include, but need not be limited to, requiring copies of receipts, agreements, or other documents as requested, or developing a method for direct payment.

(f) Compensation granted pursuant to this chapter shall not disqualify an otherwise eligible applicant from participation in any other public assistance program.

(g) The board shall pay reasonable fees to an attorney who provides legal services to a victim or derivative victim whose application or request for compensation has been recommended for denial pursuant to Section 13959. Attorney fees may not exceed 10 percent of the amount the attorney has assisted the victim or derivative victim in obtaining, or five hundred dollars ($500), whichever is less.

(h) A private nonprofit agency shall be reimbursed for its 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 may not exceed the maximum

reimbursement rates set by the board and may be made only to the extent that the victim otherwise qualifies for compensation under this chapter and that other reimbursement or direct subsidies are not available to serve the victim.

SEC. 8. Section 13957.7 is added to the Government Code, to read:

13957.7. (a) No reimbursement may be made for any expense that is submitted more than three years after it is incurred by the victim or derivative victim. However, 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.

(b) Compensation made pursuant to this chapter may be on a one-time or periodic basis. If periodic, the board may increase, reduce, or terminate the amount of compensation according to the applicant's need, subject to the maximum limits provided in this chapter.

(c) (1) The board may authorize direct payment to a provider of services that are reimbursable pursuant to this chapter and may make those payments prior to verification. However, the board may not, without good cause, authorize a direct payment to a provider over the objection of the victim or derivative victim.

(2) Reimbursement on the initial claim for any psychological, psychiatric, or mental health counseling services 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.

(d) (1) Payments for peer counseling services provided by a rape crisis center or for domestic violence peer counseling services provided by an organization that provides domestic violence counseling services, shall be established by the board at an hourly rate. Those services shall be limited to in-person counseling for a period not to exceed 10 weeks plus one series of facilitated support group counseling sessions.

(2) A rape crisis peer counselor or domestic violence peer counselor who is funded in whole by federal funds shall not be eligible to receive reimbursement under this chapter.

(e) The board shall develop procedures to ensure that a victim is using compensation for job retraining or relocation only for its intended purposes. The procedures may include, but need not be limited to, requiring copies of receipts, agreements, or other documents as requested, or developing a method for direct payment.

(f) Compensation granted pursuant to this chapter shall not disqualify an otherwise eligible applicant from participation in any other public assistance program.

(g) The board shall pay reasonable fees to an attorney who provides legal services to a victim or derivative victim whose application or request for compensation has been recommended for denial pursuant to Section 13959. Attorney fees may not exceed 10 percent of the amount the attorney has assisted the victim or derivative victim in obtaining, or five hundred dollars ($500), whichever is less.

(h) A private nonprofit agency shall be reimbursed for its 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 may not exceed the maximum reimbursement rates set by the board and may be made only to the extent that the victim otherwise qualifies for compensation under this chapter and that other reimbursement or direct subsidies are not available to serve the victim.

SEC. 9. The heading of Chapter 5 (commencing with Section 13959) of Part 4 of Division 3 of Title 2 of the Government Code is repealed.

SEC. 10. Article 1 (commencing with Section 13959) of Chapter 5 of Part 4 of Division 3 of Title 2 of the Government Code is repealed.

SEC. 11. The heading of Article 2 (commencing with Section 13970) of Chapter 5 of Part 4 of Division 3 of Title 2 of the Government Code is repealed.

SEC. 12. A heading is added as Chapter 5.5 (commencing with Section 13970) of Part 4 of Division 3 of Title 2 of the Government Code, immediately preceding Section 13970, to read:

CHAPTER 5.5. INDEMNIFICATION OF CITIZENS BENEFITING THE PUBLIC

SEC. 13. Section 13974.2 is added to the Government Code, to read:

13974.2. Any reference to Article 2 (commencing with Section 13970) of Chapter 5, as it read on December 31, 2002, shall be construed to refer to this chapter.

SEC. 14. Section 1202.42 is added to the Penal Code, to read:

1202.42. Upon entry of a restitution order under subdivision (c) of Section 13967 of the Government Code, as operative on or before September 28, 1994, paragraph (3) of subdivision (a) of Section 1202.4 of this code, or Section 1203.04 as operative on or before August 2, 1995, the following shall apply:

(a) The court shall enter a separate order for income deduction upon determination of the defendant's ability to pay, regardless of the probation status, in accordance with Section 1203. 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.

(b) (1) In any case in which the court enters a separate order for income deduction under this section, the order shall be stayed until the agency in the county responsible for collection of restitution determines that the defendant has failed to meet his or her obligation under the restitution order and the defendant has not provided the agency with good cause for the failure in accordance with paragraph (2).

(2) If the agency responsible for collection of restitution receives information that the defendant has failed to meet his or her obligation under the restitution order, the agency shall request the defendant to provide evidence indicating that timely payments have been made or provide information establishing good cause for the failure. If the defendant fails to either provide the agency with the evidence or fails to establish good cause within five days of the request, the agency shall immediately inform the defendant of that fact, and shall inform the clerk of the court in order that an income deduction order will be served pursuant to subdivision (f) following a 15-day appeal period. The defendant may apply for a hearing to contest the lifting of the stay pursuant to subdivision (f).

(c) The income deduction order shall direct a payer to deduct from all income due and payable to the defendant the amount required by the court to meet the defendant's obligation.

(d) The income deduction order shall be effective so long as the order for restitution upon which it is based is effective or until further order of the court.

(e) When the court orders the income deduction, the court shall furnish to the defendant a statement of his or her rights, remedies, and duties in regard to the income deduction order. The statement shall state all of the following:

(1) All fees or interest that will be imposed.

(2) The total amount of income to be deducted for each pay period.

(3) That the income deduction order applies to current and subsequent payers and periods of employment.

(4) That a copy of the income deduction order will be served on the defendant's payer or payers.

(5) That enforcement of the income deduction order may only be contested on the ground of mistake of fact regarding the amount of restitution owed.

(6) That the defendant is required to notify the clerk of the court within seven days after changes in the defendant's address, payers, and the addresses of his or her payers.

(7) That the court order will be stayed in accordance with subdivision (b) and that a hearing is available in accordance with subdivision (f).

(f) (1) Upon receiving the notice described in paragraph (2) of subdivision (b), the clerk of the court or officer of the agency responsible for collection of restitution shall serve an income deduction order and the notice to payer on the defendant's payer unless the defendant has applied for a hearing to contest the enforcement of the income deduction order.

(2) (A) Service by or upon any person who is a party to a proceeding under this section shall be made in the manner prescribed for service upon parties in a civil action.

(B) Service upon the defendant's payer or successor payer under this section shall be made by prepaid certified mail, return receipt requested.

(3) The defendant, within 15 days after being informed that the order staying the income deduction order will be lifted, may apply for a hearing to contest the enforcement of the income deduction order on the ground of mistake of fact regarding the amount of restitution owed or on the ground that the defendant has established good cause for the nonpayment. The timely request for a hearing shall stay the service of an income deduction order on all payers of the defendant until a hearing is held and a determination is made as to whether the enforcement of the income deduction order is proper.

(4) The notice to any payer required by this subdivision shall contain only information necessary for the payer to comply with the income deduction order. The notice shall do all of the following:

(A) Require the payer to deduct from the defendant's income the amount specified in the income deduction order, and to pay that amount to the clerk of the court.

(B) Instruct the payer to implement the income deduction order no later than the first payment date that occurs more than 14 days after the date the income deduction order was served on the payer.

(C) Instruct the payer to forward, within two days after each payment date, to the clerk of the court the amount deducted from the defendant's income and a statement as to whether the amount totally or partially satisfies the periodic amount specified in the income deduction order.

(D) Specify that if a payer fails to deduct the proper amount from the defendant's income, the payer is liable for the amount the payer should have deducted, plus costs, interest, and reasonable attorney's fees.

(E) Provide that the payer may collect up to five dollars ($5) against the defendant's income to reimburse the payer for administrative costs for the first income deduction and up to one dollar ($1) for each deduction thereafter.

(F) State that the income deduction order and the notice to payer are binding on the payer until further notice by the court or until the payer no longer provides income to the defendant.

(G) Instruct the payer that, when he or she no longer provides income to the defendant, he or she shall notify the clerk of the court and shall also

provide the defendant's last known address and the name and address of the defendant's new payer, if known, and that, if the payer violates this provision, the payer is subject to a civil penalty not to exceed two hundred fifty dollars ($250) for the first violation or five hundred dollars ($500) for any subsequent violation.

(H) State that the payer shall not discharge, refuse to employ, or take disciplinary action against the defendant because of an income deduction order and shall state that a violation of this provision subjects the payer to a civil penalty not to exceed two hundred fifty dollars ($250) for the first violation or five hundred dollars ($500) for any subsequent violation.

(I) Inform the payer that when he or she receives income deduction orders requiring that the income of two or more defendants be deducted and sent to the same clerk of a court, he or she may combine the amounts that are to be paid to the depository in a single payment as long as he or she identifies that portion of the payment attributable to each defendant.

(J) Inform the payer that if the payer receives more than one income deduction order against the same defendant, he or she shall contact the court for further instructions.

(5) The clerk of the court shall enforce income deduction orders against the defendant's successor payer who is located in this state in the same manner prescribed in this subdivision for the enforcement of an income deduction order against a payer.

(6) A person may not discharge, refuse to employ, or take disciplinary action against an employee because of the enforcement of an income deduction order. An employer who violates this provision is subject to a civil penalty not to exceed two hundred fifty dollars ($250) for the first violation or five hundred dollars ($500) for any subsequent violation.

(7) When a payer no longer provides income to a defendant, he or she shall notify the clerk of the court and shall provide the defendant's last known address and the name and address of the defendant's new payer, if known. A payer who violates this provision is subject to a civil penalty not to exceed two hundred fifty dollars ($250) for the first violation or five hundred dollars ($500) for a subsequent violation.

(g) As used in this section, ''good cause'' for failure to meet an obligation or ''good cause'' for nonpayment means, but shall not be limited to, any of the following:

(1) That there has been a substantial change in the defendant's economic circumstances, such as involuntary unemployment, involuntary cost-of-living increases, or costs incurred as the result of medical circumstances or a natural disaster.

(2) That the defendant reasonably believes there has been an administrative error with regard to his or her obligation for payment.

(3) Any other similar and justifiable reasons.

SEC. 15. Section 1202.43 is added to the Penal Code, to read:

1202.43. (a) The restitution fine imposed pursuant to subdivision (a) of Section 13967 of the Government Code, as operative on or before September 28, 1994, subparagraph (B) of paragraph (2) of subdivision (a) of Section 1203.04, as operative on or before August 2, 1995, or Section 1202.4 shall be payable to the clerk of the court, the probation officer, or any other person responsible for the collection of criminal fines. If the defendant is unable or otherwise fails to pay that fine in a felony case and there is an amount unpaid of one thousand dollars ($1,000) or more within 60 days after the imposition of sentence, or in a case in which probation is granted, within the period of probation, the clerk of the court, probation officer, or other person to whom the fine is to be paid shall forward to the Controller the abstract of judgment along with any information which may be relevant to the present and future location of the defendant and his or her assets, if any, and any verifiable amount which the defendant may have paid to the victim as a result of the crime.

(b) A restitution fine shall be deemed a debt of the defendant owing to the state for the purposes of Sections 12418 and 12419.5 of the Government Code, excepting any amounts the defendant has paid to the victim as a result of the crime. Upon request by the Controller, the district attorney of a county or the Attorney General may take any necessary action to recover amounts owing on a restitution fine. The amount of the recovery shall be increased by a sum sufficient to cover any costs incurred by any state or local agency in the administration of this section. The remedies provided by this subdivision are in addition to any other remedies provided by law for the enforcement of a judgment.

SEC. 16. (a) Section 3 of this bill incorporates changes to Section 13960 of the Government Code proposed by AB 2729 into the provisions of Section 13951, as proposed to be added to the Government Code by Section 2 of this bill. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2003, (2) AB 2729 amends Section 13960 of the Government Code, (3) this bill adds Section 13951 to the Government Code, and (4) this bill is enacted after AB 2729, in which case Section 13951 of the Government Code as added by Section 2 of this bill shall not become operative.

(b) Section 4 of this bill incorporates changes to Section 13960 of the Government Code proposed by AB 2462 into the provisions of Section 13955, as proposed to be added to the Government Code by Section 2 of this bill. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2003, (2) AB 2462 amends Section 13960 of the Government Code, (3) this bill adds Section 13955 to the Government Code, and (4) this bill is enacted after AB 2462, in

which case Section 13955 of the Government Code as added by Section 2 of this bill shall not become operative.

(c) Section 5 of this bill incorporates changes to Section 13960 of the Government Code proposed by AB 2729 into the provisions of Section 13957, as proposed to be added to the Government Code by Section 2 of this bill. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2003, (2) AB 2729 amends Section 13960 of the Government Code, (3) this bill adds Section 13957 to the Government Code, and (4) this bill is enacted after AB 2729, in which case Section 13957 of the Government Code as added by Section 2 of this bill shall not become operative.

(d) Section 6 of this bill incorporates changes to Section 13965 of the Government Code proposed by AB 2729 into the provisions of Section 13957.7, as proposed to be added to the Government Code by Section 2 of this bill. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2003, (2) AB 2729 amends Section 13965 of the Government Code, (3) this bill adds Section 13957.7 to the Government Code, (4) AB 2542 is not enacted or as enacted does not amend Section 13965 of the Government Code, and (5) this bill is enacted after AB 2729, in which case Sections 7 and 8 of this bill, and Section 13957.7 of the Government Code as added by Section 2 of this bill, shall not become operative.

(e) Section 7 of this bill incorporates changes to Section 13965 of the Government Code proposed by AB 2542 into the provisions of Section 13957.7, as proposed to be added to the Government Code by Section 2 of this bill. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2003, (2) AB 2542 amends Section 13965 of the Government Code, (3) this bill adds Section 13957.7 to the Government Code, (4) AB 2729 is not enacted or as enacted does not amend Section 13965 of the Government Code, and (5) this bill is enacted after AB 2542, in which case Sections 6 and 8 of this bill, and Section 13957.7 of the Government Code as added by Section 2 of this bill, shall not become operative.

(f) Section 8 of this bill incorporates changes to Section 13965 of the Government Code proposed by both AB 2729 and AB 2542 into the provisions of Section 13957.7, as proposed to be added to the Government Code by Section 2 of this bill. It shall only become operative if (1) all three bills are enacted and become effective on or before January 1, 2003, (2) both AB 2729 and AB 2542 amend Section 13965 of the Government Code, (3) this bill adds Section 13957.7 to the Government Code, and (4) this bill is enacted after AB 2729 and AB 2542, in which case Sections 6 and 7 of this bill, and Section 13957.7

of the Government Code as added by Section 2 of this bill, shall not become operative.

CHAPTER 1142

An act to amend Section 15051 of the Unemployment Insurance Code, and to amend Section 11324.6 of the Welfare and Institutions Code, relating to unemployment.

[Approved by Governor September 30, 2002. Filed with Secretary of State September 30, 2002.]

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

SECTION 1. Section 15051 of the Unemployment Insurance Code is amended to read:

15051. The department shall establish rules, regulations, and procedures necessary to govern the administration of the provisions of this division and to assure that the legislative purposes and intent are carried out. The regulations shall include to the extent permitted by federal law:

(a) Standards and criteria for determining eligibility and services priorities pursuant to Section 15011. These shall include, but are not limited to, standards for insuring that a service delivery area plan gives appropriate priority to public assistance recipients.

(b) Standards for determining appropriate and allowable services and training activities, and entities providing services and training. These shall include, but are not limited to, insuring that all occupational skill training correspond to area labor market demand, insuring that any training entity providing services has a demonstrated record of past performances in training and placing persons in unsubsidized private sector employment or offers reasonable assurance that services provided will result in these placements, and prohibiting contracting with entities whose officers have been convicted of fraud or misappropriation of funds within the last two years.

(c) Standards and criteria to be used in developing plans. These shall include, but are not limited to, appropriate placement goals and requirements for adequate public notice and opportunity for public involvement in the development of service delivery area plans.

(d) Standards, criteria, and procedures to be used by the department in evaluating and approving service delivery area plans.

(e) Standards for assuring adequate, efficient service delivery area administration including standards for assuring efficient service

delivery area management information and financial accounting systems.

(f) Standards and criteria for assuring effective coordination and linkages with other agencies that deliver training and employment-related services.

(g) Standards and criteria for assuring that no participant shall be employed or that no job opening shall be filled:

(1) When any other individual is on layoff from the same or any substantially equivalent job.

(2) When the employer has terminated the employment of any regular employee or otherwise reduced its workforce with the intention of filling the vacancy so created by hiring a participant whose wages are subsidized by the Workforce Investment Act of 1998 (Public Law 105-220), the successor to the Job Training Partnership Act.

(3) When the employer has not rehired a seasonal employee who has a history of regular seasonal employment with the employer. This paragraph shall only apply to the construction industry.

SEC. 2. Section 11324.6 of the Welfare and Institutions Code is amended to read:

11324.6. Any employment or training program position described in subdivisions (a) to (*l*), inclusive, of Section 11322.6 or Section 11322.9 or under any county pilot project, shall not be created as a result of, or shall not result in, any of the following:

(a) Displacement or partial displacement of current employees, including, but not limited to, a reduction in hours of nonovertime and overtime work, wages, or employment benefits.

(b) The filling of positions which would otherwise be promotional opportunities for current employees, except when positions are to be filled through an open process in which recipients are provided equal opportunity to compete.

(c) The filling of a position, prior to compliance with applicable personnel procedures or provisions of collective bargaining agreements.

(d) The filling of established unfilled public agency positions, unless the positions are unfunded in a public agency budget.

(e) The filling of a position created by termination, layoff, or reduction in workforce, caused by the employer's intent to fill the position with a subsidized position pursuant to this article.

(f) A strike, lockout, or other bona fide labor dispute, or violation of any existing collective bargaining agreement between employees and employers.

(g) The filling of a work assignment customarily performed by a worker in a job classification within a recognized collective bargaining unit in that specific worksite, or the filling of a work assignment in any

bargaining unit in which funded positions are vacant or in which regular employees are on layoff.

(h) The termination of a contract for services, prior to its expiration date, that results in the displacement or partial displacement of workers performing contracted services, caused by the employer's intent to fill the position with a subsidized position pursuant to this article.

(i) The filling of a work assignment that results in not rehiring a seasonal employee who has a history of regular seasonal employment with an employer. The provisions of this subdivision shall apply only to the construction industry.

(j) The denial to a participant or employee of protections afforded other workers on the worksite by state and federal laws governing workplace health, safety, and representation.

(k) Subdivisions (b), (d), and (g) shall not apply to unsubsidized employment placements.

CHAPTER 1143

An act to amend Section 66427.5 of the Government Code, relating to housing.

[Approved by Governor September 30, 2002. Filed with Secretary of State September 30, 2002.]

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

SECTION 1. Section 66427.5 of the Government Code is amended to read:

66427.5. At the time of filing a tentative or parcel map for a subdivision to be created from the conversion of a rental mobilehome park to resident ownership, the subdivider shall avoid the economic displacement of all nonpurchasing residents in the following manner:

(a) The subdivider shall offer each existing tenant an option to either purchase his or her condominium or subdivided unit, which is to be created by the conversion of the park to resident ownership, or to continue residency as a tenant.

(b) The subdivider shall file a report on the impact of the conversion upon residents of the mobilehome park to be converted to resident owned subdivided interest.

(c) The subdivider shall make a copy of the report available to each resident of the mobilehome park at least 15 days prior to the hearing on the map by the advisory agency or, if there is no advisory agency, by the legislative body.

(d) (1) The subdivider shall obtain a survey of support of residents of the mobilehome park for the proposed conversion.

(2) The survey of support shall be conducted in accordance with an agreement between the subdivider and a resident homeowners' association, if any, that is independent of the subdivider or mobilehome park owner.

(3) The survey shall be obtained pursuant to a written ballot.

(4) The survey shall be conducted so that each occupied mobilehome space has one vote.

(5) The results of the survey shall be submitted to the local agency upon the filing of the tentative or parcel map, to be considered as part of the subdivision map hearing prescribed by subdivision (e).

(e) The subdivider shall be subject to a hearing by a legislative body or advisory agency, which is authorized by local ordinance to approve, conditionally approve, or disapprove the map. The scope of the hearing shall be limited to the issue of compliance with this section.

(f) The subdivider shall be required to avoid the economic displacement of all nonpurchasing residents in accordance with the following:

(1) As to nonpurchasing residents who are not lower income households, as defined in Section 50079.5 of the Health and Safety Code, the monthly rent, including any applicable fees or charges for use of any preconversion amenities, may increase from the preconversion rent to market levels, as defined in an appraisal conducted in accordance with nationally recognized professional appraisal standards, in equal annual increases over a four-year period.

(2) As to nonpurchasing residents who are lower income households, as defined in Section 50079.5 of the Health and Safety Code, the monthly rent, including any applicable fees or charges for use of any preconversion amenities, may increase from the preconversion rent by an amount equal to the average monthly increase in rent in the four years immediately preceding the conversion, except that in no event shall the monthly rent be increased by an amount greater than the average monthly percentage increase in the Consumer Price Index for the most recently reported period.

SEC. 2. It is the intent of the Legislature to address the conversion of a mobilehome park to resident ownership that is not a bona fide resident conversion, as described by the Court of Appeal in El Dorado Palm Springs, Ltd. v. City of Palm Springs (2002) 96 Cal.App.4th 1153. The court in this case concluded that the subdivision map approval process specified in Section 66427.5 of the Government Code may not provide local agencies with the authority to prevent nonbona fide resident conversions. The court explained how a conversion of a mobilehome park to resident ownership could occur without the support

of the residents and result in economic displacement. It is, therefore, the intent of the Legislature in enacting this act to ensure that conversions pursuant to Section 66427.5 of the Government Code are bona fide resident conversions.

SEC. 3. The changes in law enacted by this act shall not apply to any application for parcel map approval for conversion of a rental mobilehome park to resident ownership approved by the local agency under Section 66427.5 of the Government Code prior to January 1, 2003.

CHAPTER 1144

An act to amend Section 1151.5 of the Government Code, relating to public employment.

[Approved by Governor September 30, 2002. Filed with Secretary of State September 30, 2002.]

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

SECTION 1. Section 1151.5 of the Government Code is amended to read:

1151.5. (a) In addition to deductions authorized pursuant to Section 1151, a state employee may authorize deductions to be made from salaries or wages for payment for the support, maintenance, or care of the employee's child, children, family, or former spouse for whom the employee has a duty of support. A service charge may be assessed for this deduction.

(b) A public agency may establish payroll deduction programs for any of the following purposes:

(1) Payment for the support, maintenance, or care of an employee's child, children, family, or former spouse for whom the employee has a duty of support.

(2) Payment of an employee's legal judgment.

(3) Garnishment or deduction of an employee's wages pursuant to a court order.

(4) Payment of an employee's loan or obligation to a commercial lending institution.

CHAPTER 1145

An act to add Chapter 6.5 (commencing with Section 1164) to Part 3.5 of Division 2 of the Labor Code, relating to agricultural labor relations.

[Approved by Governor September 30, 2002. Filed with Secretary of State September 30, 2002.]

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

SECTION 1. The Legislature finds and declares that a need exists for a mediation procedure in order to ensure a more effective collective bargaining process between agricultural employers and agricultural employees, and thereby more fully attain the purposes of the Agricultural Labor Relations Act, ameliorate the working conditions and economic standing of agricultural employees, create stability in the agricultural labor force, and promote California's economic well-being by ensuring stability in its most vital industry.

SEC. 2. Chapter 6.5 (commencing with Section 1164) is added to Part 3.5 of Division 2 of the Labor Code, to read:

CHAPTER 6.5. CONTRACT DISPUTE RESOLUTION

1164. (a) An agricultural employer or a labor organization certified as the exclusive bargaining agent of a bargaining unit of agricultural employees may file with the board, at any time following 90 days after certification of the labor organization, a declaration that the parties have failed to reach a collective bargaining agreement and a request that the board issue an order directing the parties to mandatory mediation and conciliation of their issues. ''Agricultural employer,'' for purposes of this chapter, means an agricultural employer, as defined in subdivision (c) of Section 1140.4, who has employed or engaged 25 or more agricultural employees during any calendar week in the year preceding the filing of a declaration pursuant to this subdivision.

(b) Upon receipt of a declaration pursuant to subdivision (a), the board shall immediately issue an order directing the parties to mandatory mediation and conciliation of their issues. The board shall request from the California State Mediation and Conciliation Service a list of nine mediators who have experience in labor mediation. The California State Mediation and Conciliation Service may include names chosen from its own mediators, or from a list of names supplied by the American Arbitration Association or the Federal Mediation Service. The parties shall select a mediator from the list within seven days of receipt of the list. If the parties cannot agree on a mediator, they shall strike names from the list until a mediator is chosen by process of elimination. If a

party refuses to participate in selecting a mediator, the other party may choose a mediator from the list. The costs of mediation and conciliation shall be borne equally by the parties.

(c) Upon appointment, the mediator shall immediately schedule meetings at a time and location reasonably accessible to the parties. Mediation shall proceed for a period of 30 days. Upon expiration of the 30-day period, if the parties do not resolve the issues to their mutual satisfaction, the mediator shall certify that the mediation process has been exhausted. Upon mutual agreement of the parties, the mediator may extend the mediation period for an additional 30 days.

(d) Within 21 days, the mediator shall file a report with the board that resolves all of the issues between the parties and establishes the final terms of a collective bargaining agreement, including all issues subject to mediation and all issues resolved by the parties prior to the certification of the exhaustion of the mediation process. With respect to any issues in dispute between the parties, the report shall include the basis for the mediator's determination. The mediator's determination shall be supported by the record.

1164.3. (a) Either party, within seven days of the filing of the report by the mediator, may petition the board for review of the report. The petitioning party shall, in the petition, specify the particular provisions of the mediator's report for which it is seeking review by the board and shall specify the specific grounds authorizing review by the board. The board, within 10 days of receipt of a petition, may accept for review those portions of the petition for which a prima facie case has been established that (1) a provision of the collective bargaining agreement set forth in the mediator's report is unrelated to wages, hours, or other conditions of employment within the meaning of Section 1155.2, or (2) a provision of the collective bargaining agreement set forth in the mediator's report is based on clearly erroneous findings of material fact.

(b) If it finds grounds exist to grant review within the meaning of subdivision (a), the board shall order the provisions of the report that are not the subject of the petition for review into effect as a final order of the board. If the board does not accept a petition for review or no petition for review is filed, then the mediator's report shall become a final order of the board.

(c) The board shall issue a decision concerning the petition and if it determines that a provision of the collective bargaining agreement contained in the mediator's report violates the provisions of subdivision (a), it shall issue an order requiring the mediator to modify the terms of the collective bargaining agreement. The mediator shall meet with the parties for additional mediation for a period not to exceed 30 days. At the expiration of this mediation period, the mediator shall prepare a

second report resolving any outstanding issues. The second report shall be filed with the board.

(d) Either party, within seven days of the filing of the mediator's second report, may petition the board for a review of the mediator's second report pursuant to the procedures specified in subdivision (a). If no petition is filed, the mediator's report shall take immediate effect as a final order of the board. If a petition is filed, the board shall issue an order confirming the mediator's report and order it into immediate effect, unless it finds that the report is subject to review for any of the grounds specified in subdivision (a), in which case the board shall determine the issues and shall issue a final order of the board.

(e) Either party, within seven days of the filing of the report by the mediator, may petition the board to set aside the report if a prima facie case is established that any of the following have occurred: (1) the mediator's report was procured by corruption, fraud, or other undue means, (2) there was corruption in the mediator, or (3) the rights of the petitioning party were substantially prejudiced by the misconduct of the mediator. For the sole purpose of interpreting the terms of paragraphs (1), (2), and (3), case law that interprets similar terms used in Section 1286.2 of the Code of Civil Procedure shall apply. If the board finds that any of these grounds exist, the board shall within 10 days vacate the report of the mediator and shall order the selection and appointment of a new mediator, and an additional mediation period of 30 days, pursuant to Section 1164.

(f) Within 60 days after the order of the board takes effect, either party or the board may file an action to enforce the order of the board, in the superior court for the County of Sacramento or in the county where the parties' principal place of business is located. No final order of the board shall be stayed during any appeal under this section, unless the court finds that (1) the appellant will be irreparably harmed by the implementation of the board's order, and (2) the appellant has demonstrated a likelihood of success on appeal.

1164.5. (a) Within 30 days after the order of the board takes effect, a party may petition for a writ of review in the court of appeal or the California Supreme Court. If the writ issues, it shall be made returnable at a time and place specified by court order and shall direct the board to certify its record in the case to the court within the time specified. The petition for review shall be served personally upon the executive director of the board and the nonappealing party personally or by service.

(b) The review by the court shall not extend further than to determine, on the basis of the entire record, whether any of the following occurred:

(1) The board acted without, or in excess of, its powers or jurisdiction.

(2) The board has not proceeded in the manner required by law.

(3) The order or decision of the board was procured by fraud or was an abuse of discretion.

(4) The order or decision of the board violates any right of the petitioner under the Constitution of the United States or the California Constitution.

(c) Nothing in this section shall be construed to permit the court to hold a trial de novo, to take evidence other than as specified by the California Rules of Court, or to exercise its independent judgment on the evidence.

1164.7. (a) The board and each party to the action or proceeding before the mediator may appear in the review proceeding. Upon the hearing, the court of appeal or the Supreme Court shall enter judgment either affirming or setting aside the order of the board.

(b) The provisions of the Code of Civil Procedure relating to writs of review shall, so far as applicable, apply to proceedings instituted under this chapter.

1164.9. No court of this state, except the court of appeal or the Supreme Court, to the extent specified in this article, shall have jurisdiction to review, reverse, correct, or annul any order or decision of the board to suspend or delay the execution or operation thereof, or to enjoin, restrain, or interfere with the board in the performance of its official duties, as provided by law and the rules of court.

1164.11. This chapter shall apply to all election certifications issued by the board before and after the effective date of this chapter.

1164.13. 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.

CHAPTER 1146

An act to amend Sections 1164, 1164.3, and 1164.11 of, and to add Sections 1164.12 and 1164.14 to, the Labor Code, relating to agricultural labor relations.

[Approved by Governor September 30, 2002. Filed with Secretary of State September 30, 2002.]

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

SECTION 1. Section 1164 of the Labor Code, as added by Senate Bill No. 1156 of the 2001–02 Regular Session, is amended to read:

1164. (a) An agricultural employer or a labor organization certified as the exclusive bargaining agent of a bargaining unit of agricultural employees may file with the board, at any time following (1) 90 days after a renewed demand to bargain by an agricultural employer or a labor organization certified prior to January 1, 2003, which meets the conditions specified in Section 1164.11 or (2) 180 days after an initial request to bargain by an agricultural employer or a labor organization certified after January 1, 2003, a declaration that the parties have failed to reach a collective bargaining agreement and a request that the board issue an order directing the parties to mandatory mediation and conciliation of their issues. ''Agricultural employer,'' for purposes of this chapter, means an agricultural employer, as defined in subdivision (c) of Section 1140.4, who has employed or engaged 25 or more agricultural employees during any calendar week in the year preceding the filing of a declaration pursuant to this subdivision.

(b) Upon receipt of a declaration pursuant to subdivision (a), the board shall immediately issue an order directing the parties to mandatory mediation and conciliation of their issues. The board shall request from the California State Mediation and Conciliation Service a list of nine mediators who have experience in labor mediation. The California State Mediation and Conciliation Service may include names chosen from its own mediators, or from a list of names supplied by the American Arbitration Association or the Federal Mediation Service. The parties shall select a mediator from the list within seven days of receipt of the list. If the parties cannot agree on a mediator, they shall strike names from the list until a mediator is chosen by process of elimination. If a party refuses to participate in selecting a mediator, the other party may choose a mediator from the list. The costs of mediation and conciliation shall be borne equally by the parties.

(c) Upon appointment, the mediator shall immediately schedule meetings at a time and location reasonably accessible to the parties. Mediation shall proceed for a period of 30 days. Upon expiration of the 30-day period, if the parties do not resolve the issues to their mutual satisfaction, the mediator shall certify that the mediation process has been exhausted. Upon mutual agreement of the parties, the mediator may extend the mediation period for an additional 30 days.

(d) Within 21 days, the mediator shall file a report with the board that resolves all of the issues between the parties and establishes the final terms of a collective bargaining agreement, including all issues subject to mediation and all issues resolved by the parties prior to the certification of the exhaustion of the mediation process. With respect to any issues in dispute between the parties, the report shall include the basis for the mediator's determination. The mediator's determination shall be supported by the record.

SEC. 2. Section 1164.3 of the Labor Code, as added by Senate Bill No. 1156 of the 2001–02 Regular Session, is amended to read:

1164.3. (a) Either party, within seven days of the filing of the report by the mediator, may petition the board for review of the report. The petitioning party shall, in the petition, specify the particular provisions of the mediator's report for which it is seeking review by the board and shall specify the specific grounds authorizing review by the board. The board, within 10 days of receipt of a petition, may accept for review those portions of the petition for which a prima facie case has been established that (1) a provision of the collective bargaining agreement set forth in the mediator's report is unrelated to wages, hours, or other conditions of employment within the meaning of Section 1155.2, or (2) a provision of the collective bargaining agreement set forth in the mediator's report is based on clearly erroneous findings of material fact.

(b) If it finds grounds exist to grant review within the meaning of subdivision (a), the board shall order the provisions of the report that are not the subject of the petition for review into effect as a final order of the board. If the board does not accept a petition for review or no petition for review is filed, then the mediator's report shall become a final order of the board.

(c) The board shall issue a decision concerning the petition and if it determines that a provision of the collective bargaining agreement contained in the mediator's report violates the provisions of subdivision (a), it shall, within 21 days, issue an order requiring the mediator to modify the terms of the collective bargaining agreement. The mediator shall meet with the parties for additional mediation for a period not to exceed 30 days. At the expiration of this mediation period, the mediator shall prepare a second report resolving any outstanding issues. The second report shall be filed with the board.

(d) Either party, within seven days of the filing of the mediator's second report, may petition the board for a review of the mediator's second report pursuant to the procedures specified in subdivision (a). If no petition is filed, the mediator's report shall take immediate effect as a final order of the board. If a petition is filed, the board shall issue an order confirming the mediator's report and order it into immediate effect, unless it finds that the report is subject to review for any of the grounds specified in subdivision (a), in which case the board shall determine the issues and shall issue a final order of the board.

(e) Either party, within seven days of the filing of the report by the mediator, may petition the board to set aside the report if a prima facie case is established that any of the following have occurred: (1) the mediator's report was procured by corruption, fraud, or other undue means, (2) there was corruption in the mediator, or (3) the rights of the petitioning party were substantially prejudiced by the misconduct of the

mediator. For the sole purpose of interpreting the terms of paragraphs (1), (2), and (3), case law that interprets similar terms used in Section 1286.2 of the Code of Civil Procedure shall apply. If the board finds that any of these grounds exist, the board shall within 10 days vacate the report of the mediator and shall order the selection and appointment of a new mediator, and an additional mediation period of 30 days, pursuant to Section 1164.

(f) Within 60 days after the order of the board takes effect, either party or the board may file an action to enforce the order of the board, in the superior court for the County of Sacramento or in the county where either party's principal place of business is located. No final order of the board shall be stayed during any appeal under this section, unless the court finds that (1) the appellant will be irreparably harmed by the implementation of the board's order, and (2) the appellant has demonstrated a likelihood of success on appeal.

SEC. 3. Section 1164.11 of the Labor Code, as added by Senate Bill No. 1156 of the 2001–02 Regular Session, is amended to read:

1164.11. A demand made pursuant to paragraph (1) of subdivision (a) of Section 1164 may be made only in cases which meet all of the following criteria: (a) the parties have failed to reach agreement for at least one year after the date on which the labor organization made its initial request to bargain, (b) the employer has committed an unfair labor practice, and (c) the parties have not previously had a binding contract between them.

SEC. 4. Section 1164.12 is added to the Labor Code, immediately following Section 1164.11 of the Labor Code, as added by Senate Bill No. 1156 of the 2001–02 Regular Session, to read:

1164.12. To ensure an orderly implementation of the mediation process ordered by this chapter, a party may not file a total of more than 75 declarations with the board. In calculating the number of declarations so filed, the identity of the other party with respect to whom the declaration is filed, shall be irrelevant.

SEC. 5. Section 1164.14 is added to the Labor Code, immediately following Section 1164.13 of the Labor Code, as added by Senate Bill No. 1156 of the 2001–02 Regular Session, to read:

1164.14. This chapter shall remain in effect only until January 1, 2008, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2008, deletes or extends that date.

SEC. 6. This act shall become operative only if this bill and Senate Bill No. 1156 is enacted and becomes effective on or before January 1, 2003.

CHAPTER 1147

An act to amend Section 409 of, and to add Section 455.2 to, the Public Utilities Code, relating to public utilities, and making an appropriation therefor.

[Approved by Governor September 30, 2002. Filed with Secretary of State September 30, 2002.]

I am signing Assembly Bill 2838, but reducing the appropriation from the Public Utilities Commission Utilities Reimbursement Account from $445,000 to $222,500.

This bill requires the Public Utilities Commission (PUC) to act on water utilities' rate applications within specified timelines and allows water utilities to enact interim rates at the rate of inflation when their rate cases are delayed, subject to refunds by the PUC. The bill also requires water utilities to file a rate application with the PUC every three years.

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 rate case plan for water corporations adopted by the Public Utilities Commission in Decision No. 90-08-045 has not been updated or revised to reflect statutes adopted since its promulgation in 1990.

(b) It is in the public's interest to provide a certain but flexible schedule for investigating and addressing rate changes proposed by water corporations.

(c) Not later than December 31, 2003, the commission should review and revise, as appropriate, the rate case plan for water corporations adopted by Decision No. 90-08-045 to ensure its consistency with relevant statutes and commission practice in addressing rate applications by water corporations.

(d) Whenever a water corporation files an application for a rate change pursuant to the rate case plan for water corporations, the commission should render a decision consistent with the schedule established in the plan.

(e) The provisions of this act should not be construed as precedent for any other utility.

SEC. 2. Section 409 of the Public Utilities Code is amended to read:

409. (a) Notwithstanding any other provision of law, all fees and charges collected pursuant to this code by the commission from each public utility subject to Section 431, with the exception of any penalty collected pursuant to Section 405 or 406, shall be deposited in the Public Utilities Commission Utilities Reimbursement Account, in addition to the fee authorized by Section 431.

(b) A penalty collected pursuant to Section 405 or 406 shall be deposited in the General Fund.

SEC. 3. Section 455.2 is added to the Public Utilities Code, to read:

455.2. (a) The commission shall issue its final decision on a general rate case application of a water corporation with greater than 10,000 service connections in a manner that ensures that the commission's decision becomes effective on the first day of the first test year in the general rate increase application.

(b) If the commission's decision is not effective in accordance with subdivision (a), the applicant may file a tariff implementing interim rates that may be increased by an amount equal to the rate of inflation as compared to existing rates. The interim rates shall be effective on the first day of the first test year in the general rate case application. These interim rates shall be subject to refund and shall be adjusted upward or downward back to the interim rate effective date, consistent with the final rates adopted by the commission. The commission may authorize a lesser increase in interim rates if the commission finds the rates to be in the public interest. If the presiding officer in the case determines that the commission's decision cannot become effective on the first day of the first test year due to actions by the water corporation, the presiding officer or commission may require a different effective date for the interim rates or final rates.

(c) The commission shall establish a schedule to require every water corporation subject to the rate case plan for water corporations to file an application pursuant to the plan every three years. The plan shall include a provision to allow the filing requirement to be waived upon mutual agreement of the commission and the water corporation.

(d) The requirements of subdivisions (a) and (b) may be waived at any time by mutual consent of the executive director of the commission and the water corporation.

SEC. 4. The sum of four hundred forty-five thousand dollars ($445,000) is hereby appropriated from the Public Utilities Commission Utilities Reimbursement Account in the General Fund for costs incurred by the Public Utilities Commission in the 2002–03 fiscal year in the administration of Section 455.2 of the Public Utilities Code. That sum shall be allocated from those moneys in the Public Utilities Commission Utilities Reimbursement Account derived from the imposition of regulatory fees pursuant to Section 431 of the Public Utilities Code, and may not include moneys in the Public Utilities Commission Utilities Reimbursement Account derived from the imposition of penalties pursuant to Sections 405 and 406 of the Public Utilities Code.

CHAPTER 1148

An act to amend Sections 7301, 7302, 7304, 7309, 7311, 7312, and 7314 of, and to amend and repeal Section 7303 of, the Business and Professions Code, relating to barbering and cosmetology.

[Approved by Governor September 30, 2002. Filed with Secretary of State September 30, 2002.]

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

SECTION 1. Section 7301 of the Business and Professions Code is amended to read:

7301. This chapter constitutes the chapter on hair, skin, nail care, and electrolysis and may be known and cited as the Barbering and Cosmetology Act.

SEC. 2. Section 7302 of the Business and Professions Code is amended to read:

7302. The following definitions shall apply for purposes of this chapter:

(a) ''Department'' means the Department of Consumer Affairs.

(b) ''Director'' means the Director of Consumer Affairs.

(c) ''Board'' or ''bureau'' means the State Board of Barbering and Cosmetology.

(d) ''Executive officer means the executive officer of the State Board of Barbering and Cosmetology.

SEC. 3. Section 7303 of the Business and Professions Code is amended to read:

7303. (a) Notwithstanding Article 8 (commencing with Section 9148) of Chapter 1.5 of Part 1 of Division 2 of Title 2 of the Government Code, there is in the Department of Consumer Affairs the State Board of Barbering and Cosmetology in which the administration of this chapter is vested.

(b) The board shall consist of nine members. Five members shall be public members and four members shall represent the professions. The Governor shall appoint three of the public members and the four professions members. The Senate Committee on Rules and the Speaker of the Assembly shall each appoint one public member. Members of the board shall be appointed for a term of four years, except that of the members appointed by the Governor, two of the public members and two of the professions members shall be appointed for an initial term of two years. No board member may serve longer than two consecutive terms.

(c) The board shall appoint an executive officer who is exempt from civil service. The executive officer shall exercise the powers and perform the duties delegated by the board and vested in him or her by this chapter.

The appointment of the executive officer is subject to the approval of the director. In the event that a newly authorized board replaces an existing or previous bureau, the director may appoint an interim executive officer for the board who shall serve temporarily until the new board appoints a permanent executive officer.

(d) The executive officer shall provide examiners, inspectors, and other personnel necessary to carry out the provisions of this chapter.

(e) This section shall become inoperative on July 1, 2007, and, as of January 1, 2008, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 2008, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 4. Section 7304 of the Business and Professions Code is amended to read:

7304. The board shall be subject to review pursuant to Division 1.2 (commencing with Section 473).

SEC. 5. Section 7309 of the Business and Professions Code is amended to read:

7309. The board shall establish a principal office, and may establish branch offices and examination facilities in the state as may be deemed necessary for the bureau to conduct its business.

SEC. 6. Section 7311 of the Business and Professions Code is amended to read:

7311. The board shall adopt and use a common seal for the authentication of the board's records.

SEC. 7. Section 7312 of the Business and Professions Code is amended to read:

7312. The board shall do all of the following:

(a) Make rules and regulations in aid or furtherance of this chapter in accordance with the Administrative Procedure Act.

(b) Conduct and administer examinations of applicants for licensure.

(c) Issue licenses to those applicants that may be entitled thereto.

(d) Discipline persons who have been determined to be in violation of this chapter or the regulations adopted pursuant to this chapter.

(e) Adopt rules governing sanitary conditions and precautions to be employed as are reasonably necessary to protect the public health and safety in establishments, schools approved by the board, and in the practice of any profession provided for in this chapter. The rules shall be adopted in accordance with the Administrative Procedure Act, Chapter 3.5 (commencing with Section 11340) of Title 2 of the Government Code, and shall be submitted to the State Department of Health Services and approved by that department prior to filing with the Secretary of State. A written copy of all those rules shall be furnished to each licensee.

SEC. 8. Section 7314 of the Business and Professions Code is amended to read:

7314. The board shall keep a record of its proceedings relating to its public meetings, meetings of committees, and records relating to the issuance, refusal, renewal, suspension and revocation of licenses.

The board shall keep a registration record of each licensee containing the name, address, license number and date issued. This record shall also contain any facts that the applicants may have stated in their application for examination for licensure.

SEC. 9. This act shall become operative only if Senate Bill 1957 of the 2001–02 Regular Session is enacted and becomes effective on or before January 1, 2003.

CHAPTER 1149

An act to amend the heading of Chapter 2 (commencing with Section 7300) of Part 3 of Division 5 of, to amend Sections 7301, 7301.5, 7303, 7304, 7305, 7306, 7307, 7308, 7310, 7311, 7312, 7313, 7314, 7315, 7316, 7317, 7318, 7320, 7321, 7321.5, and 7322 of, to add Sections 7300.1, 7300.2, 7300.3, 7300.4, 7301.1, 7302.1, 7302.2, 7309.1, 7311.1, 7311.2, 7311.3, 7311.4, 7323, 7324, 7324.1, and 7324.2 to, and to repeal and add Sections 7300 and 7302 of, the Labor Code, relating to equipment safety.

[Approved by Governor September 30, 2002. Filed with Secretary of State September 30, 2002.]

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

SECTION 1. The heading of Chapter 2 (commencing with Section 7300) of Part 3 of Division 5 of the Labor Code is amended to read:

CHAPTER 2. ELEVATORS, ESCALATORS, PLATFORM AND STAIRWAY CHAIR LIFTS, DUMBWAITERS, MOVING WALKS, AUTOMATED PEOPLE MOVERS, AND OTHER CONVEYANCES

SEC. 2. Section 7300 of the Labor Code is repealed.

SEC. 3. Section 7300 is added to the Labor Code, to read:

7300. The Legislature finds and declares all of the following:

(a) It is the purpose of this chapter to promote public safety awareness and to assure, to the extent feasible, the safety of the public and of workers with respect to conveyances covered by this chapter.

(b) The use of unsafe or defective conveyances imposes a substantial probability of serious and preventable injury to employees and the public. The prevention of these injuries and protection of employees and

the public from unsafe conditions is in the best interest of the people of this state. Therefore, this chapter also establishes minimum standards for persons operating or maintaining conveyances covered by this chapter. These standards include familiarity with the operation and safety functions of the components and equipment, and documented training or experience or both, which shall include, but not be limited to, recognizing the safety hazards and performing the procedures to which they are assigned in conformance with all legal requirements.

(c) This chapter is not intended to prevent the division from implementing regulations, nor to prevent the use of systems, methods, or devices of equivalent or superior quality, strength, fire resistance, code effectiveness, durability, and safety to those required by the law, provided that there is technical documentation to demonstrate that the equivalency of the system, method, or device, is at least as effective as that prescribed in ASME A17.1, ASME A17.3, ASME A18.1, or ASCE 21.

SEC. 4. Section 7300.1 is added to the Labor Code, to read:

7300.1. As used in this chapter:

(a) ''ASCE 21'' means the Automated People Mover Standards, as adopted by the American Society of Civil Engineers.

(b) ''ASME A17.1'' means the Safety Code for Elevators and Escalators, an American National Standard, as adopted by the American Society of Mechanical Engineers.

(c) ''ASME A17.3'' means the Safety Code for Existing Elevators and Escalators, an American National Standard, as adopted by the American Society of Mechanical Engineers.

(d) ''ASME A18.1'' means the Safety Standard for Platform Lifts and Stairway Chairlifts, an American National Standard, as adopted by the American Society of Mechanical Engineers.

(e) ''Automated people mover'' has the same meaning as defined in ASCE 21.

(f) ''Board'' or ''standards board'' means the Occupational Safety and Health Standards Board.

(g) ''Certified qualified elevator company'' means any person, firm, or corporation that (1) possesses a valid contractor's license if required by Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code and (2) is certified as a qualified elevator company by the division in accordance with this chapter.

(h) ''Certified competent elevator mechanic'' means any person who has been determined by the division to have the qualifications and ability of a competent journey-level elevator mechanic and is so certified by the division in accordance with this chapter.

(i) ''Conveyance'' means any elevator, dumbwaiter, escalator, moving platform lift, stairway chairlift, dumbwaiter, material lift or

dumbwaiter with automatic transfer device, automated people mover, or other equipment subject to this chapter.

(j) ''Division'' means the Division of Occupational Safety and Health.

(k) ''Dormant elevator, dumbwaiter, or escalator'' means an installation placed out of service as specified in ASME A17.1 and ASME A18.1.

(*l*) ''Elevator'' means an installation defined as an ''elevator'' in ASME A17.1.

(m) ''Elevator inspector'' means any elevator safety inspector of the division or other elevator inspector determined by the division to be qualified pursuant to this chapter. ''Elevator inspector'' includes any inspector determined by the division to be qualified to inspect other types of conveyances.

(n) ''Escalator'' means an installation defined as an ''escalator'' in ASME A17.1.

(o) ''Existing installation'' means an installation defined as an ''installation, existing'' in ASME A17.1.

(p) ''Full maintenance service contract'' means an agreement by a certified competent elevator company and the person owning or having the custody, management, or control of the operation of the conveyance, if the agreement provides that the certified competent elevator company is responsible for effecting repairs necessary to the safe operation of the equipment and will provide services as frequently as is necessary, but no less often than monthly.

(q) ''Material alteration'' means an alteration as defined in ASME A17.1 or A18.1.

(r) ''Moving walk'' or ''moving sidewalk'' means an installation defined as a ''moving walk'' in ASME A17.1.

(s) ''Permit'' means a document issued by the division that indicates that the conveyance has had the required safety inspection and tests and fees have been paid as set forth in this chapter.

(t) ''Temporary permit'' means a document issued by the division which permits the use of a noncompliant conveyance by the general public for a limited time while minor repairs are being completed or until permit fees are paid.

(u) ''Repair'' has the same meaning as defined in ASME A17.1 or A18.1. A ''repair'' does not require a permit.

(v) ''Temporarily dormant elevator, dumbwaiter, or escalator'' means a conveyance, the power supply of which has been disconnected by removing fuses and placing a padlock on the mainline disconnect switch in the ''off'' position. In the case of an elevator or dumbwaiter, the car shall be parked and the hoistway doors shall be in the closed and latched position. A wire seal shall be installed on the mainline

disconnect switch by an elevator inspector of the division. The wire seal and padlock shall not be removed for any purpose without permission from an elevator inspector of the division. A temporarily dormant elevator, dumbwaiter, or escalator shall not be used again until it has been put in safe running order and is in condition for use. Annual inspections by an elevator inspector shall continue for the duration of the temporarily dormant status. Temporarily dormant status may be renewed annually, but shall not exceed five years. After each inspection, the elevator inspector shall file a report with the chief of the division describing the current condition of the conveyance.

(w) The meanings of building transportation terms not otherwise defined in this section shall be as defined in the latest editions of ASME A17.1 and ASME A18.1.

SEC. 5. Section 7300.2 is added to the Labor Code, to read:

7300.2. Except as provided in Section 7300.3, this chapter covers the design, erection, construction, installation, material alteration, inspection, testing, maintenance, repair, service, and operation of the following conveyances and their associated parts and hoistways:

(a) Hoisting and lowering mechanisms equipped with a car or platform which move between two or more landings. This equipment includes, but is not limited to, the following:

(1) Elevators.

(2) Platform lifts and stairway chair lifts.

(b) Power-driven stairways and walkways for carrying persons between landings. This equipment includes, but is not limited to, the following:

(1) Escalators.

(2) Moving walks.

(c) Hoisting and lowering mechanisms equipped with a car which serve two or more landings and are restricted to the carrying of material by limited size or limited access to the car. This equipment includes, but is not limited to, the following:

(1) Dumbwaiters.

(2) Material lifts and dumbwaiters with automatic transfer devices.

(d) Automatic guided transit vehicles on guideways with an exclusive right-of-way. This equipment includes, but is not limited to, automated people movers.

SEC. 6. Section 7300.3 is added to the Labor Code, to read:

7300.3. Equipment not covered by this chapter includes the following:

(a) Material hoists within the scope of standard A10.5 as adopted by the American National Standards Institute.

(b) Mobile scaffolds, towers, and platforms within the scope of standard A92 as adopted by the American National Standards Institute.

(c) Powered platforms and equipment for exterior and interior maintenance within the scope of standard 120.1 as adopted by the American National Standards Institute.

(d) Cranes, derricks, hoists, hooks, jacks, and slings within the scope of standard B30 as adopted by the American Society of Mechanical Engineers.

(e) Industrial trucks within the scope of standard B56 as adopted by the American Society of Mechanical Engineers.

(f) Portable equipment, except for portable escalators that are covered by standard A17.1 as adopted by the American National Standards Institute.

(g) Tiering or piling machines used to move materials to and from storage located and operating entirely within one story.

(h) Equipment for feeding or positioning materials, including that equipment used with machine tools or printing presses.

(i) Skip or furnace hoists.

(j) Wharf ramps.

(k) Railroad car lifts or dumpers.

(*l*) Line jacks, false cars, shafters, moving platforms, and similar equipment used for installing an elevator by a contractor licensed in this state.

SEC. 7. Section 7300.4 is added to the Labor Code, to read:

7300.4. This chapter does not apply to work that is not related to standards for conveyances that are (a) incorporated in codes promulgated by the American National Standards Institute or the American Society of Mechanical Engineers or (b) included in regulations of the division, in effect immediately prior to January 1, 2003, prescribing elevator safety orders. Work exempted pursuant to this section includes, but is not limited to, routine nonmechanical maintenance, such as cleaning panels and changing light fixtures.

SEC. 8. Section 7301 of the Labor Code is amended to read:

7301. No conveyance shall be operated in this state unless a permit for its operation is issued by or in behalf of the division, and unless the permit remains in effect and is kept posted conspicuously on the conveyance. Operation of a conveyance without a permit or failure to post the permit conspicuously shall constitute cause for the division to prohibit use of the conveyance, unless it can be shown that a request for issuance or renewal of a permit has been made and the request has not been acted upon by the division.

SEC. 9. Section 7301.1 is added to the Labor Code, to read:

7301.1. (a) On and after June 30, 2003, no conveyance may be erected, constructed, installed, or materially altered, as defined by regulation of the division, unless a permit has been obtained from the division before the work is commenced. A copy of the permit shall be

kept at the construction site at all times while the work is in progress and shall be made available for inspection upon request. This section shall not apply to platform lifts and stairway chair lifts installed in a private residence as provided in paragraph (2) or (3) of subdivision (a) of Section 7317.

(b) Before March 1, 2003, the division shall establish an application procedure and all requirements for a permit under this section, which shall include the following:

(1) At a minimum, the applicant for a permit under this section shall meet all of the following requirements:

(A) The applicant shall hold a current elevator contractor's license issued pursuant to Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code.

(B) The applicant shall be a certified qualified elevator company.

(C) The applicant shall submit proof of the following types of insurance coverage, in the form of certified copies of policies or certificates of insurance:

(i) Liability insurance to provide general liability coverage of not less than one million dollars ($1,000,000) for the injury or death of any one person or persons in any one occurrence, with coverage of not less than five hundred thousand dollars ($500,000) for property damage in any one occurrence.

(ii) Workers' compensation insurance coverage.

In the event of any material alteration, nonrenewal, or cancellation of any insurance required by this subparagraph, the applicant or permitholder shall submit written notice thereof to the division within five working days.

(2) At a minimum, each application for a permit under this section shall include all of the following:

(A) Copies of specifications and accurately scaled and fully dimensioned plans showing the location of the installation in relation to the plans and elevation of the building; the location of the machinery room and the equipment to be installed, relocated, or altered; and all structural supporting members thereof, including foundations. The plans and specifications shall identify all materials to be employed and all loads to be supported or conveyed. The plans and specifications shall be sufficiently complete to illustrate all details of construction and design.

(B) The name, residence, and business address of the applicant and each partner, or for a corporation of the principal officers and anyone who is authorized to accept service of process or official notices; the number of years the applicant has engaged in the business of constructing, erecting, installing, or altering conveyances; the approximate number of persons to be employed on the permitted job; a

declaration signed by the applicant regarding all civil actions to which the applicant is or was a party, whether pending and closed within the last 10 years, which declaration shall provide sufficient information to identify parties, the nature of action, and outcome; and other information as the division may require.

(C) The permit fee.

(3) The division shall establish, and may from time to time amend, a fee for a permit under this section in an amount sufficient to defray the division's actual costs in administering the permit process, including the costs of investigation, revocation, or other associated costs. Permit fees collected by the division are nonrefundable.

(c) (1) The permit shall expire when the work authorized by that permit is not commenced within six months after the date of issuance, or within a shorter period as the division may specify at the time the permit is issued.

(2) The permit shall expire following commencement of work, if the permitholder suspends or abandons the work for a period of 60 days, or for a shorter period of time as the division may specify at the time the permit is issued.

(3) Upon application and for good cause shown, the division may extend a permit that would otherwise expire under this subdivision.

(d) The division may revoke any permit at any time, upon good cause, and after notice and an opportunity to be heard.

SEC. 10. Section 7301.5 of the Labor Code is amended to read:

7301.5. (a) The standards board shall adopt regulations pertaining to conveyances, including, but not limited to, conveyance emergency and signal devices, and the operation of conveyances under fire and other emergency conditions.

(b) Before January 1, 2003, the division shall establish an application procedure and all requirements for certification under this subdivision as an emergency certified competent elevator mechanic. To ensure the safety of the public when a disaster or other emergency exists within the state and the number of certified competent elevator mechanics in the state is insufficient to cope with the emergency, any certified qualified elevator company may, within five business days after commencing work requiring certified competent elevator mechanics, apply to the division, on behalf of all persons performing the work who are not certified competent elevator mechanics, for certification as emergency certified competent elevator mechanics. Any person for whom emergency certification is sought under this subdivision shall be certified by a certified qualified elevator company to have an acceptable combination of documented experience and education to perform work covered by this chapter without direct and immediate supervision. The certified qualified elevator company shall furnish proof of competency

as the division may require. The division shall issue an emergency certified competent elevator mechanic certificate upon receipt of acceptable documentation and payment of the required fee. Each certificate issued pursuant to this subdivision shall recite that it is valid for a period of 30 days from the date of issuance and for those particular conveyances and geographical areas as the division may designate, and otherwise shall entitle the person being certified to the rights and privileges of a certified competent elevator mechanic as set forth in this chapter. The division shall renew an emergency certified competent elevator mechanic certificate during the existence of the emergency.

(c) Before January 1, 2004, the division shall establish an application procedure and all requirements for certification under this subdivision as a temporary certified competent elevator mechanic. If there are no certified qualified elevator mechanics available to perform elevator work, a certified qualified elevator company may apply to the division for certification of one or more temporary certified competent elevator mechanics. Any person seeking to work as a temporary certified competent elevator mechanic shall, before beginning work, be approved by the division as having an acceptable combination of documented experience and education to perform work covered by this chapter without direct and immediate supervision. The certified qualified elevator company shall furnish proof of competency as the division may require. The division may issue a temporary certified competent elevator mechanic certificate upon acceptable documentation and payment of the required fee. Each certificate issued pursuant to this subdivision shall recite that it is valid for a period of 30 days from the date of issuance and while the certificate holder is employed by the certified qualified elevator company that certified the individual as competent. The certificate shall be renewable as long as the shortage of certified competent elevator mechanics continues.

SEC. 11. Section 7302 of the Labor Code is repealed.

SEC. 12. Section 7302 is added to the Labor Code, to read:

7302. The operation of a conveyance without a permit by any person owning or having the custody, management, or control of the operation of the conveyance, is a misdemeanor, punishable by a fine of not more than one thousand dollars ($1,000), imprisonment in the county jail for not more than 10 days, or by both that fine and imprisonment. Each day of operation for each conveyance without a permit is a separate offense. Any person who has requested the issuance or renewal of a permit if the request has not been acted upon by the division may not be prosecuted for a violation of this section.

SEC. 13. Section 7302.1 is added to the Labor Code, to read:

7302.1. (a) Any person who contracts for or authorizes the erection, construction, installation, or material alteration of a conveyance without

a permit in violation of Section 7301.1 is guilty of a misdemeanor punishable by a fine of not more than seventy thousand dollars ($70,000), imprisonment in the county jail for not more than one year, or by both that fine and imprisonment.

(b) Any employer or contractor who contracts for or engages in the erection, construction, installation, or material alteration of a conveyance without a permit in violation of Section 7301.1 is guilty of a misdemeanor punishable by a fine of not more than seventy thousand dollars ($70,000), imprisonment in the county jail for not more than one year, or by both that fine and imprisonment.

SEC. 14. Section 7302.2 is added to the Labor Code, to read:

7302.2. The division may assess a civil penalty of not more than seventy thousand dollars ($70,000) against any person, and against any employer or contractor, who contracts for or authorizes the erection, construction, installation, or material alteration of a conveyance without a permit issued pursuant to Section 7301.1.

SEC. 15. Section 7303 of the Labor Code is amended to read:

7303. (a) Whenever any conveyance is operated without a current valid permit issued pursuant to Section 7304, and is in a condition that its use is dangerous to the life or safety of any person, the division or any affected person may apply to the superior court of the county in which the conveyance is located for an injunction restraining the operation of the conveyance until the condition is corrected. Proof by certification of the division that a permit has not been issued, has expired, or has been revoked, together with the affidavit of any safety inspector of the division or other expert that the operation of the conveyance is dangerous to the life or safety of any person, is sufficient ground, in the discretion of the court, for the immediate granting of a temporary restraining order.

(b) No bond shall be required from the division as a prerequisite for the division to seek or obtain any restraining order under subdivision (a).

(c) Any person who intentionally violates any injunction prohibiting the operation of the conveyance issued pursuant to subdivision (a) shall be liable for a civil penalty, to be assessed by the division, not to exceed seven thousand dollars ($7,000) for each violation. Each day of operation for each conveyance is a separate violation.

SEC. 16. Section 7304 of the Labor Code is amended to read:

7304. (a) Except as provided in subdivisions (b) and (c), the division shall cause all conveyances to be inspected at least once each year. If a conveyance is found upon inspection to be in a safe condition for operation, a permit for operation for not longer than one year shall be issued by the division.

(b) If a conveyance is subject to a full maintenance service contract, the division may, after investigation and inspection, issue a permit for operation for not longer than two years.

SEC. 17. Section 7305 of the Labor Code is amended to read:

7305. If inspection shows that a conveyance is in an unsafe condition, the division may issue a preliminary order requiring repairs or alterations to be made to the conveyance that are necessary to render it safe, and may prohibit its operation or use until the repairs or alterations are made or the unsafe conditions are removed.

SEC. 18. Section 7306 of the Labor Code is amended to read:

7306. Unless the preliminary order is complied with, a hearing before the division shall be allowed, upon request, at which the owner, operator, or other person in charge of the conveyance may appear and show cause why he or she should not comply with the order.

SEC. 19. Section 7307 of the Labor Code is amended to read:

7307. (a) If it thereafter appears to the division that the conveyance is unsafe and that the requirements contained in the preliminary order should be complied with, or that other things should be done to make the conveyance safe, the division may order or confirm the withholding of the permit and may impose requirements as it deems proper for the repair or alteration of the conveyance or for the correction of the unsafe condition. The order may thereafter be reheard by the division or reviewed by the courts in the manner specified for safety orders by Part 1 (commencing with Section 6300) of this division, and not otherwise.

(b) The operation of a conveyance by any person owning or having the custody, management, or control of the operation thereof, while an order to repair is outstanding pursuant to subdivision (a), is a misdemeanor punishable by a fine of not more than seven thousand dollars ($7,000), by imprisonment in the county jail for not more than 30 days, or by both that fine and imprisonment. Each day of operation for each conveyance without a permit is a separate offense.

SEC. 20. Section 7308 of the Labor Code is amended to read:

7308. If the operation of a conveyance during the making of repairs or alterations is not immediately dangerous to the safety of persons, the division may issue a temporary permit for its operation for a period not to exceed 30 days during the making of repairs or alterations.

SEC. 21. Section 7309.1 is added to the Labor Code, to read:

7309.1. (a) On and after June 30, 2003, no conveyance subject to this chapter shall be reinspected by any person unless the person is an elevator inspector employed by the division or certified as qualified by the division.

(b) Before March 1, 2003, the division shall establish an application procedure and all requirements for the certification of elevator inspectors. Each application for certification shall include information

as the division may require and the applicable fee. At a minimum, the applicant shall present proof of certification as a qualified elevator inspector by the American Society of Mechanical Engineers or proof of education and experience equivalent to what is required to obtain that certification from the American Society of Mechanical Engineers.

SEC. 22. Section 7310 of the Labor Code is amended to read:

7310. The division may also issue its permit or a permit may be issued on its behalf based upon a certificate of inspection issued by an elevator inspector of any municipality, upon proof to the satisfaction of the division that the safety requirements of the municipality are equal to the minimum safety requirements for conveyances adopted by the board.

SEC. 23. Section 7311 of the Labor Code is amended to read:

7311. All persons inspecting conveyances shall first secure from the division a certificate of competency to make those inspections. The division may determine the competency of any applicant for the certificate, either by examination or by other satisfactory proof of qualifications. The division may rescind at any time, upon good cause being shown therefor, and after hearing, if requested, any certificate of competency issued by it to an elevator inspector.

SEC. 24. Section 7311.1 is added to the Labor Code, to read:

7311.1. (a) On and after June 30, 2003, no conveyance subject to this chapter shall be erected, constructed, installed, materially altered, tested, maintained, repaired, or serviced by any person, firm, or corporation unless the person, firm, or corporation is certified by the division as a certified qualified elevator company. A copy of the certificate shall be kept at the site of the conveyance at all times while any work is in progress, and shall be made available for inspection upon request. However, certification under this section is not required for removing or dismantling conveyances that are destroyed as a result of the complete demolition of a secured building or structure or where the hoistway or wellway is demolished back to the basic support structure and no access is permitted that would endanger the safety of any person. This section shall not apply to platform lifts and stairway chair lifts installed in a private residence as provided in paragraph (2) or (3) of subdivision (a) of Section 7317.

(b) Before March 1, 2003, the division shall establish an application procedure and all requirements for certification under this section as a certified qualified elevator company, consistent with this section. At a minimum, the individual qualifying on behalf of a corporation, the owner on behalf of a sole ownership, or the partners on behalf of a partnership, shall meet either of the following requirements:

(1) Five years' work experience at a journey person level in the elevator industry in construction, installation, alteration, testing, maintenance, and service and repair of conveyances covered by this

chapter. This experience shall be verified by current and previously licensed elevator contractors or by current and previously certified qualified elevator companies.

(2) Satisfactory completion of a written examination administered by the division on the most recent applicable codes and standards.

(c) At a minimum, each application for certification as a certified qualified elevator company shall include:

(1) The name, residence and business address, and telephone numbers and other means to contact the sole owner or each partner, or for a corporation of the principal officers and the individual qualifying for the corporation; the number of years the applicant business has engaged in the business of constructing, maintaining, and service and repair of conveyances; and other information as the division may require.

(2) The fee required by this chapter.

(d) Before bidding for or engaging in any work covered by this chapter, a certified qualified elevator company shall submit proof to the division by certified copies of policies or certificates of insurance, of all of the following:

(1) Liability insurance providing general liability coverage of not less than one million dollars ($1,000,000) for injury or death of any one person or persons in any one occurrence, with coverage of not less than five hundred thousand dollars ($500,000) for property damage in any of any one person or persons in any one occurrence.

(2) Workers' compensation insurance coverage.

In the event of any material alteration or cancellation of any policy specified in paragraph (1) or (2), the certified qualified elevator company shall provide written notice thereof to the division within five working days.

SEC. 25. Section 7311.2 is added to the Labor Code, to read:

7311.2. (a) On and after June 30, 2003, except as provided in subdivisions (b) and (c) of Section 7301.5, any person who, without supervision, erects, constructs, installs, alters, tests, maintains, services or repairs, removes, or dismantles any conveyance covered by this chapter, shall be certified as a certified competent elevator mechanic by the division. This section shall not apply to platform lifts and stairway chair lifts installed in a private residence as provided in paragraph (2) or (3) of subdivision (a) of Section 7317.

(b) Before March 1, 2003, the division shall establish an application procedure and all requirements for certification under this section as a certified competent elevator mechanic, consistent with all of the following:

(1) At a minimum, a certified competent elevator mechanic applicant shall meet both of the following requirements:

(A) Three years' work experience in the elevator industry in construction, maintenance, and service and repair of conveyances covered by this chapter. This experience shall be verified by current and previously licensed elevator contractors or by current and previously certified qualified elevator companies, as required by the division.

(B) One of the following:

(i) Satisfactory completion of a written examination administered by the division on the most recent applicable codes and standards.

(ii) A certificate of completion and successfully passing the mechanic examination of a nationally recognized training program for the elevator industry, such as the National Elevator Industry Educational Program or its equivalent.

(iii) A certificate of completion of an apprenticeship program for elevator mechanic, having standards substantially equal to those of this chapter, and which program shall be registered with the Bureau of Apprenticeship and Training of the United States Department of Labor or a state apprenticeship council.

(iv) A certificate or license from another state having standards substantially equal to or more comprehensive than those of this chapter.

(v) The applicant applies on or before December 31, 2003, and within the three years immediately prior to January 1, 2003, has documented at least three years of actual work experience in the elevator industry in construction, maintenance, and service and repair of conveyances covered by this chapter. This experience shall be as a journey-level mechanic working without direct and immediate supervision, and shall be verified by currently and previously licensed elevator contractors or by current and previously certified qualified elevator companies, as required by the division.

(2) At a minimum, each application for certification as a certified competent elevator mechanic shall include the information required by the division and the fee required by this chapter.

SEC. 26. Section 7311.3 is added to the Labor Code, to read:

7311.3. (a) A certificate issued by the division to the certified qualified elevator inspector, certified qualified elevator company, or certified competent elevator mechanic as set forth in Sections 7309.1, 7311.1, and 7311.2, shall have a term of two years. The fee for biennial renewal shall be established by the division in an amount sufficient to defray the division's costs of administering this chapter.

(b) The renewal of all certificates issued under this chapter shall be conditioned upon the submission of a certificate of completion of a course designed to ensure the continuing education of certificate holders on new and existing provisions of the regulations of the board. This continuing education course shall consist of not less than eight hours of

instruction that shall be attended and completed within one year immediately preceding any certificate renewal.

(c) The courses shall be taught by instructors through continuing education providers that may include, but shall not be limited to, division programs, association seminars, and joint labor-management apprenticeship and journeyman upgrade training programs. The division shall approve the continuing education providers and curriculum. All instructors shall be approved by the division and shall be exempt from the requirements of subdivision (b), provided that the applicant is qualified as an instructor at any time during the one-year period immediately preceding the scheduled date for renewal.

(d) A certificate holder who is unable to complete the continuing education course required under this section prior to the expiration of his or her certificate due to a temporary disability may apply for a waiver from the division. Waiver applications shall be submitted to the division on a form provided by the division. Waiver applications shall be signed and accompanied by a declaration signed by a competent physician attesting to the applicant's temporary disability. Upon the termination of the temporary disability, the certificate holder shall submit to the division a declaration from the same physician, if practicable, attesting to the termination of the temporary disability, and a waiver sticker, valid for 90 days, shall be issued to the certificate holder and affixed to his or her certificate.

(e) Continuing education providers approved by the division shall keep uniform records, for a period of 10 years, of attendance of certificate holders, following a format approved by the division. These records shall be available for inspection by the division at its request. Approved continuing education providers shall keep secure all attendance records and certificates of completion. Falsifying or knowingly allowing another to falsify attendance records or certificates of completion of continuing education provided pursuant to this section shall constitute grounds for suspension or revocation of the approval required under this section.

SEC. 27. Section 7311.4 is added to the Labor Code, to read:

7311.4. (a) The division shall establish fees for initial and renewal applications for certification under this chapter as a certified qualified elevator inspector, certified qualified elevator company, or certified competent elevator mechanic based upon the actual costs involved with the certification process, including the cost of developing and administering any tests as well as any costs related to continuing education, investigation, revocation, or other associated costs.

(b) Fees collected pursuant to this chapter are nonrefundable.

SEC. 28. Section 7312 of the Labor Code is amended to read:

7312. The division may at any time, upon good cause being shown therefor, and after notice and an opportunity to be heard, revoke any permit to operate a conveyance.

SEC. 29. Section 7313 of the Labor Code is amended to read:

7313. Each elevator inspector shall, within 21 days after he or she makes an inspection, forward to the division on forms provided by it, a report of the inspection. Failure to comply with this section shall be grounds for the division to cancel his or her certificate.

SEC. 30. Section 7314 of the Labor Code is amended to read:

7314. (a) The division may fix and collect fees for the inspection of conveyances as it deems necessary to cover the actual costs of having the inspection performed by a division safety engineer, including administrative costs, and the costs related to regulatory development as required by Section 7323. An additional fee may, in the discretion of the division, be charged for necessary subsequent inspections to determine if applicable safety orders have been complied with.

(b) The division may fix and collect fees for field consultations regarding conveyances as it deems necessary to cover the actual costs of the time spent in the consultation by a division safety engineer, including administrative and travel expenses.

(c) Whenever a person owning or having the custody, management, or operation of a conveyance fails to pay the fees required under this chapter within 60 days after the date of notification, he or she shall pay, in addition to the fees required under this chapter, a penalty fee equal to 100 percent of the fee. Failure to pay fees within 60 days after the date of notification shall constitute cause for the division to prohibit use of the conveyance.

(d) Any fees required pursuant to this section shall be set forth in regulations that shall be adopted as emergency regulations. These emergency regulations shall not be subject to the review and approval of the Office of Administrative Law pursuant to the provisions of the Administrative Procedure Act provided for in Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. These regulations shall become effective immediately upon filing with the Secretary of State.

(e) For purposes of this section, the date of the invoice assessing a fee pursuant to this section shall be considered the date of notification.

SEC. 31. Section 7315 of the Labor Code is amended to read:

7315. Fees shall be paid before the issuance of any permit to operate a conveyance, but a temporary permit may be issued pending receipt of fee payment. No fee shall be charged by the division where an inspection has been made by an inspector of an insurance company or municipality if that inspector holds a certificate as an elevator inspector and an

inspection report is filed with the division within 21 days after inspection is made.

SEC. 32. Section 7316 of the Labor Code is amended to read:

7316. All fees collected by the division under this chapter shall be paid into the Elevator Safety Account which is hereby created for the administration of the division's conveyance safety program. The division shall establish criteria upon which fee charges are based and prepare an annual report concerning revenues obtained and expenditures appropriated for the conveyance safety program. The division shall file the report with the Legislative Analyst, the Joint Legislative Audit Committee, and the Department of Finance.

SEC. 33. Section 7317 of the Labor Code is amended to read:

7317. (a) Except as provided in subdivision (b), the following conveyances are exempt from this chapter:

(1) Conveyances under the jurisdiction of the United States government.

(2) Conveyances located in a single-unit private home and not accessible to the public.

(3) Conveyances located in a multiunit residential building serving no more than two dwelling units and not accessible to the public.

(b) Conveyances otherwise exempted pursuant to paragraph (3) of subdivision (a) shall be inspected by the division upon completion of installation prior to being placed in service or after major alterations. The inspection shall be for safety and compliance with orders or regulations applicable to the type of conveyance installed.

SEC. 34. Section 7318 of the Labor Code is amended to read:

7318. Nothing in this chapter limits the authority of the division to prescribe or enforce general or special safety orders.

SEC. 35. Section 7320 of the Labor Code is amended to read:

7320. The division may assess a civil penalty not to exceed one thousand dollars ($1,000) against any person owning or having custody, management, or control of the operation of a conveyance, who operates the conveyance without a permit or who fails to conspicuously post the permit in the conveyance. No penalty shall be assessed against any person who has requested the issuance or renewal of a permit and the request has not been acted upon by the division.

SEC. 36. Section 7321 of the Labor Code is amended to read:

7321. (a) The division may assess a civil penalty not to exceed seventy thousand dollars ($70,000) against any person owning or having custody, management, or control of the operation of a conveyance, who operates or permits the operation of the conveyance in a condition that is dangerous to the life or safety of any person, or who operates or permits the operation of the conveyance in violation of an order prohibiting use issued pursuant to Section 7301, 7305, or 7314.

(b) The division shall issue an order prohibiting use and may assess a civil penalty not to exceed seventy thousand dollars ($70,000) against any person who constructs, installs, or materially alters a conveyance without a permit issued pursuant to Section 7301.1 that is dangerous to the life or safety of any person.

SEC. 37. Section 7321.5 of the Labor Code is amended to read:

7321.5. The division shall enforce Sections 7320 and 7321 by issuance of a citation and notice of civil penalty in a manner consistent with Sections 6317 and 6319. Any person owning or having custody, management, or control of the operation of a conveyance who receives a citation and notice of civil penalty may appeal to the Occupational Safety and Health Appeals Board in a manner consistent with Section 6319.

SEC. 38. Section 7322 of the Labor Code is amended to read:

7322. (a) Once an authorized representative of the division has issued an order prohibiting the use of a conveyance as specified in Sections 7301, 7305, 7314, or subdivision (b) of Section 7321, the person owning or having custody, management, or operation of the conveyance may contest the order and shall be granted, upon request, a hearing to review the validity of the order. The hearing shall be held no later than 10 working days following receipt of the request for hearing.

(b) After a notice is attached as provided in Section 7305 or subdivision (b) of Section 7321, every person who enters or uses, or directs or causes another to enter or use, any conveyance before it is made safe, or who defaces, destroys, or removes the notice without the authority of the division, is guilty of a misdemeanor punishable by a fine of not more than seventy thousand dollars ($70,000), by imprisonment in the county jail for not more than one year, or by both that fine and imprisonment.

(c) After a notice is attached for failure to comply with the requirements of Section 7301 or 7314, every person who enters or uses, or directs or causes another to enter or use, any conveyance before it is made safe, or who defaces, destroys, or removes the notice without the authority of the division, is guilty of a misdemeanor punishable by a fine of not more than seven thousand dollars ($7,000), imprisonment in the county jail for not more than six months, or by both that fine and imprisonment.

SEC. 39. Section 7323 is added to the Labor Code, to read:

7323. The division shall propose to the standards board for review, and the standards board shall adopt, regulations for the equipment covered by this chapter. Not later than December 31, 2003, the division shall propose final rulemaking proposals to the standards board for review and adoption, which shall include provisions at least as effective as ASME A17.1, ASME A17.3, ASME A18.1, and ASCE 21, as in

effect prior to September 30, 2002. Not later than nine months after the effective date of any revision or any substantive revision to any addendum to these codes, the division shall propose additional final rulemaking proposals to the standards board for review and adoption at least as effective as those in the revised code or addendum. The standards board shall notice the division's final rulemaking proposals for public hearing within three months of their receipt and shall adopt the proposed regulations promptly and in accordance with subdivision (b) of Section 11346.4 of the Government Code.

SEC. 40. Section 7324 is added to the Labor Code, to read:

7324. Individuals, firms, or companies certified as described in this chapter shall ensure that installation, service, and maintenance of elevators and other conveyances are performed in compliance with the provisions contained in the State Fire Prevention and Building Code and with generally accepted standards referenced in that code.

SEC. 41. Section 7324.1 is added to the Labor Code, to read:

7324.1. This chapter shall not be construed to relieve or lessen the responsibility or liability of any person, firm, or corporation owning, operating, controlling, maintaining, erecting, constructing, installing, altering, testing, or repairing any conveyance or other related mechanisms covered by this chapter for damages to any person or property caused by any defect therein.

SEC. 42. Section 7324.2 is added to the Labor Code, to read:

7324.2. The provisions of this chapter added or amended by the act enacting this section shall not be applied retroactively. Equipment subject to this chapter shall be required to comply with the applicable standards in effect on the date of its installation or within the period determined by the board for compliance with ASME A17.3, whichever is more stringent.

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.

CHAPTER 1150

An act to amend Sections 800, 1648.20, 2460, 2475, 2486, 2496, 2499.5, 2602, 2607.5, 2620.7, 2660, 2684, 3010, 3013, 3014.5, 3710,

3716, 3717, 3718, 3735.3, 3740, 3750.5, 3753.1, 3758.6, 3761, 3770, 3774, 3777, 5061, 5108, 6710, 6714, 8710, and 22253 of, to add Sections 450.2, 453, 2660.2, 2661.6, 3010.1, 3014.6, 3025.6, 3751.1, 3766, 3767, 3768, and 22253.2 to, and to repeal Sections 3712.5, 3750.6, and 3775.1 of, the Business and Professions Code, and to amend Section 123105 of the Health and Safety Code, relating to professions and vocations, and making an appropriation therefor.

[Approved by Governor September 30, 2002. Filed with Secretary of State September 30, 2002.]

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

SECTION 1. It is the intent of the Legislature, upon the enactment of Senate Bill 2022 of the 2001–02 Regular Session, which will codify the scope of practice of dental hygienists, to pursue the creation of an independent board that would regulate the practice of dental hygienists.

SEC. 1.2. Section 450.2 is added to the Business and Professions Code, to read:

450.2. In order to avoid a potential for a conflict of interest, a public member of a board shall not:

(a) Be a current or past licensee of that board.

(b) Be a close family member of a licensee of that board.

SEC. 1.4. Section 453 is added to the Business and Professions Code, to read:

453. Every newly appointed board member shall, within one year of assuming office, complete a training and orientation program offered by the department regarding, among other things, his or her functions, responsibilities, and obligations as a member of a board. The department shall adopt regulations necessary to establish this training and orientation program and its content.

SEC. 2. Section 800 of the Business and Professions Code is amended to read:

800. (a) The Medical Board of California, the Board of Psychology, the Dental Board of California, the Osteopathic Medical Board of California, the Board of Chiropractic Examiners, the California Board of Registered Nursing, the Board of Vocational Nursing and Psychiatric Technicians, the State Board of Optometry, the Veterinary Medical Board, the Board of Behavioral Sciences, the Physical Therapy Board of California, and the State Board of Pharmacy shall each separately create and maintain a central file of the names of all persons who hold a license, certificate, or similar authority from that board. Each central file shall be created and maintained to provide an individual historical record for each licensee with respect to (1) any conviction of a crime in this or any other state that constitutes unprofessional conduct pursuant

to the reporting requirements of Section 803; (2) any judgment or settlement requiring the licensee or his or her insurer, to pay any amount of damages in excess of three thousand dollars ($3,000) for any claim that injury or death was proximately caused by the licensee's negligence, error or omission in practice, or by rendering unauthorized professional services, pursuant to the reporting requirements of Section 801 or 802; (3) any public complaints for which provision is hereinafter made, pursuant to subdivision (b) of this section; (4) disciplinary information reported pursuant to Section 805.

(b) Each board shall prescribe and promulgate forms on which members of the public and other licensees or certificate holders may file written complaints to the board alleging any act of misconduct in, or connected with, the performance of professional services by the licensee.

If a board, or division thereof, a committee, or a panel has failed to act upon a complaint or report within five years, or has found that the complaint or report is without merit, the central file shall be purged of information relating to the complaint or report.

Notwithstanding this subdivision, the Board of Psychology, the Board of Behavioral Sciences, and the Respiratory Care Board of California shall maintain complaints or reports as long as each board deems necessary.

(c) The contents of any central file which are not public records under any other provision of law shall be confidential except that the licensee involved, or his or her counsel or representative, shall have the right to inspect and have copies made of his or her complete file except for the provision that may disclose the identity of an information source. For the purposes of this section, a board may protect an information source by providing a copy of the material with only those deletions necessary to protect the identity of the source or by providing a comprehensive summary of the substance of the material. Whichever method is used, the board shall ensure that full disclosure is made to the subject of any personal information that could reasonably in any way reflect or convey anything detrimental, disparaging, or threatening to a licensee's reputation, rights, benefits, privileges, or qualifications, or be used by a board to make a determination that would affect a licensee's rights, benefits, privileges, or qualifications.

The licensee may, but is not required to, submit any additional exculpatory or explanatory statement or other information which the board shall include in the central file.

Each board may permit any law enforcement or regulatory agency when required for an investigation of unlawful activity or for licensing, certification, or regulatory purposes to inspect and have copies made of that licensee's file, unless the disclosure is otherwise prohibited by law.

These disclosures shall effect no change in the confidential status of these records.

SEC. 2.5. Section 800 of the Business and Professions Code is amended to read:

800. (a) The Medical Board of California, the Board of Psychology, the Dental Board of California, the Osteopathic Medical Board of California, the State Board of Chiropractic Examiners, the Board of Registered Nursing, the Board of Vocational Nursing and Psychiatric Technicians, the State Board of Optometry, the Veterinary Medical Board, the Board of Behavioral Sciences, the Physical Therapy Board of California, and the California State Board of Pharmacy shall each separately create and maintain a central file of the names of all persons who hold a license, certificate, or similar authority from that board. Each central file shall be created and maintained to provide an individual historical record for each licensee with respect to the following information:

(1) Any conviction of a crime in this or any other state that constitutes unprofessional conduct pursuant to the reporting requirements of Section 803.

(2) Any judgment or settlement requiring the licensee or his or her insurer to pay any amount of damages in excess of three thousand dollars ($3,000) for any claim that injury or death was proximately caused by the licensee's negligence, error or omission in practice, or by rendering unauthorized professional services, pursuant to the reporting requirements of Section 801 or 802.

(3) Any public complaints for which provision is made pursuant to subdivision (b).

(4) Disciplinary information reported pursuant to Section 805.

(b) Each board shall prescribe and promulgate forms on which members of the public and other licensees or certificate holders may file written complaints to the board alleging any act of misconduct in, or connected with, the performance of professional services by the licensee.

If a board, or division thereof, a committee, or a panel has failed to act upon a complaint or report within five years, or has found that the complaint or report is without merit, the central file shall be purged of information relating to the complaint or report.

Notwithstanding this subdivision, the Board of Psychology, the Board of Behavioral Sciences, and the Respiratory Care Board of California shall maintain complaints or reports as long as each board deems necessary.

(c) The contents of any central file that are not public records under any other provision of law shall be confidential except that the licensee involved, or his or her counsel or representative, shall have the right to

inspect and have copies made of his or her complete file except for the provision that may disclose the identity of an information source. For the purposes of this section, a board may protect an information source by providing a copy of the material with only those deletions necessary to protect the identity of the source or by providing a comprehensive summary of the substance of the material. Whichever method is used, the board shall ensure that full disclosure is made to the subject of any personal information that could reasonably in any way reflect or convey anything detrimental, disparaging, or threatening to a licensee's reputation, rights, benefits, privileges, or qualifications, or be used by a board to make a determination that would affect a licensee's rights, benefits, privileges, or qualifications. The information required to be disclosed pursuant to Section 803.1 shall not be considered among the contents of a central file for the purposes of this subdivision.

The licensee may, but is not required to, submit any additional exculpatory or explanatory statement or other information that the board shall include in the central file.

Each board may permit any law enforcement or regulatory agency when required for an investigation of unlawful activity or for licensing, certification, or regulatory purposes to inspect and have copies made of that licensee's file, unless the disclosure is otherwise prohibited by law.

These disclosures shall effect no change in the confidential status of these records.

SEC. 3. Section 1648.20 of the Business and Professions Code is amended to read:

1648.20. (a) This article shall not apply to any surgical, endodontic, periodontic, or orthodontic dental procedure in which dental restorative materials are not used.

(b) For purposes of this article, ''dental restorative materials'' means any structure or device placed into a patient's mouth with the intent that it remain there for an indefinite period beyond the completion of the dental procedure, including material used for filling cavities in, or rebuilding or repairing the organic structure of, a tooth or teeth, but excluding synthesized structures or devices intended to wholly replace an extracted tooth or teeth, such as implants.

SEC. 4. Section 2460 of the Business and Professions Code is amended to read:

2460. There is created within the jurisdiction of the Medical Board of California and its divisions the California Board of Podiatric Medicine.

This section shall become inoperative on July 1, 2007, and, as of January 1, 2008, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 2008, deletes or extends the dates on which it becomes inoperative and is repealed. The repeal of this

section renders the California Board of Podiatric Medicine subject to the review required by Division 1.2 (commencing with Section 473).

SEC. 4.2. Section 2475 of the Business and Professions Code is amended to read:

2475. Unless otherwise provided by law, no postgraduate trainee, intern, resident postdoctoral fellow, or instructor may engage in the practice of podiatric medicine, or receive compensation therefor, or offer to engage in the practice of podiatric medicine unless he or she holds a valid, unrevoked, and unsuspended certificate to practice podiatric medicine issued by the division. However, a graduate of an approved college or school of podiatric medicine upon whom the degree doctor of podiatric medicine has been conferred, who is issued a resident's license, which may be renewed annually for up to four years for this purpose by the division upon recommendation of the board, and who is enrolled in a postgraduate training program approved by the board, may engage in the practice of podiatric medicine whenever and wherever required as a part of that program under the following conditions:

(a) A graduate with a resident's license in an approved internship, residency, or fellowship program may participate in training rotations outside the scope of podiatric medicine, under the supervision of a physician and surgeon who holds a medical doctor or doctor of osteopathy degree wherever and whenever required as a part of the training program, and may receive compensation for that practice. If the graduate fails to receive a license to practice podiatric medicine under this chapter within two years from the commencement of the postgraduate training, all privileges and exemptions under this section shall automatically cease.

(b) Podiatric hospitals functioning as a part of the teaching program of an approved college or school of podiatric medicine in this state may exchange instructors or resident or assistant resident podiatrists with another approved college or school of podiatric medicine not located in this state, or those hospitals may appoint a graduate of an approved school as such a resident for purposes of postgraduate training. Those instructors and residents may practice and be compensated as provided in subdivision (a), but that practice and compensation shall be for a period not to exceed one year.

SEC. 5. Section 2486 of the Business and Professions Code is amended to read:

2486. The division shall issue, upon the recommendation of the board, a certificate to practice podiatric medicine if the applicant meets all of the following requirements:

(a) The applicant has graduated from an approved school or college of podiatric medicine and meets the requirements of Section 2483.

(b) The applicant, within the past 10 years, has passed parts I, II, and III of the examination administered by the National Board of Podiatric Medical Examiners of the United States or has passed a written examination that is recognized by the board to be the equivalent in content to the examination administered by the National Board of Podiatric Medical Examiners of the United States.

(c) The applicant has satisfactorily completed the postgraduate training required by Section 2484.

(d) The applicant has passed within the past 10 years any oral and practical examination that may be required of all applicants by the board to ascertain clinical competence.

(e) The applicant has committed no acts or crimes constituting grounds for denial of a certificate under Division 1.5 (commencing with Section 475).

(f) The board determines that no disciplinary action has been taken against the applicant by any podiatric licensing authority and that the applicant has not been the subject of adverse judgments or settlements resulting from the practice of podiatric medicine that the board determines constitutes evidence of a pattern of negligence or incompetence.

(g) A disciplinary databank report regarding the applicant has been directly presented to the board from the Federation of Podiatric Medical Boards.

SEC. 6. Section 2496 of the Business and Professions Code is amended to read:

2496. In order to ensure the continuing competence of persons licensed to practice podiatric medicine, the board shall adopt and administer 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) requiring continuing education of those licensees. The board shall require those licensees to demonstrate satisfaction of the continuing education requirements and one of the following requirements at each license renewal:

(a) Passage of an examination administered by the board within the past 10 years.

(b) Passage of an examination administered by an approved specialty certifying board within the past 10 years.

(c) Current diplomate, board-eligible, or board-qualified status granted by an approved specialty certifying board within the past 10 years.

(d) Recertification of current status by an approved specialty certifying board within the past 10 years.

(e) Successful completion of an approved residency or fellowship program within the past 10 years.

(f) Granting or renewal of current staff privileges within the past five years by a health care facility that is licensed, certified, accredited, conducted, maintained, operated, or otherwise approved by an agency of the federal or state government or an organization approved by the Medical Board of California.

(g) Successful completion within the past five years of an extended course of study approved by the board.

(h) Passage within the past 10 years of Part III of the examination administered by the National Board of Podiatric Medical Examiners.

SEC. 7. 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, 2006, and as of that date is reduced to eight hundred dollars ($800), unless a later enacted

statute, that is enacted before January 1, 2006, 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 resident's license under Section 2475.

(k) The application fee for ankle certification under Section 2472 for persons licensed prior to January 1, 1984, 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. 8. Section 2602 of the Business and Professions Code is amended to read:

2602. The Physical Therapy Board of California, hereafter referred to as the board, shall enforce and administer this chapter.

This section shall become inoperative on July 1, 2007, and, as of January 1, 2008, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 2008, deletes or extends the dates on which it becomes inoperative and is repealed.

The repeal of this section renders the board subject to the review required by Division 1.2 (commencing with Section 473).

SEC. 9. Section 2607.5 of the Business and Professions Code is amended to read:

2607.5. The board may appoint a person exempt from civil service who shall be designated as an executive officer and who shall exercise the powers and perform the duties delegated by the board and vested in him or her by this chapter.

This section shall become inoperative on July 1, 2007, and, as of January 1, 2008, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 2008, deletes or extends the dates on which it becomes inoperative and is repealed.

The repeal of this section renders the board subject to the review required by Division 1.2 (commencing with Section 473).

SEC. 10. Section 2620.7 of the Business and Professions Code is amended to read:

2620.7. (a) A physical therapist shall document his or her evaluation, goals, treatment plan, and summary of treatment in the patient record.

(b) A physical therapist shall document the care actually provided to a patient in the patient record.

(c) A physical therapist shall sign the patient record legibly.

(d) Patient records shall be maintained for a period of no less than seven years following the discharge of the patient, except that the records of unemancipated minors shall be maintained at least one year after the minor has reached the age of 18 years, and not in any case less than seven years.

SEC. 11. Section 2660 of the Business and Professions Code is amended to read:

2660. The board may, after the conduct of appropriate proceedings under the Administrative Procedure Act, suspend for not more than 12 months, or revoke, or impose probationary conditions upon any license, certificate, or approval issued under this chapter for unprofessional conduct that includes, but is not limited to, one or any combination of the following causes:

(a) Advertising in violation of Section 17500.

(b) Fraud in the procurement of any license under this chapter.

(c) Procuring or aiding or offering to procure or aid in criminal abortion.

(d) Conviction of a crime which substantially relates to the qualifications, functions, or duties of a physical therapist or physical therapy assistant. The record of conviction or a certified copy thereof shall be conclusive evidence of that conviction.

(e) Impersonating or acting as a proxy for an applicant in any examination given under this chapter.

(f) Habitual intemperance.

(g) Addiction to the excessive use of any habit-forming drug.

(h) Gross negligence in his or her practice as a physical therapist or physical therapy assistant.

(i) Conviction of a violation of any of the provisions of this chapter or of the State Medical Practice Act, or violating, or attempting to violate, directly or indirectly, or assisting in or abetting the violating of, or conspiring to violate any provision or term of this chapter or of the State Medical Practice Act.

(j) The aiding or abetting of any person to violate this chapter or any regulations duly adopted under this chapter.

(k) The aiding or abetting of any person to engage in the unlawful practice of physical therapy.

(*l*) The commission of any fraudulent, dishonest, or corrupt act which is substantially related to the qualifications, functions, or duties of a physical therapist or physical therapy assistant.

(m) Except for good cause, the knowing failure to protect patients by failing to follow infection control guidelines of the board, thereby risking transmission of blood-borne infectious diseases from licensee to patient, from patient to patient, and from patient to licensee. In administering this subdivision, the board shall consider referencing the standards, regulations, and guidelines of the State Department of Health Services developed pursuant to Section 1250.11 of the Health and Safety Code and the standards, regulations, and guidelines pursuant to the California Occupational Safety and Health Act of 1973 (Part 1 (commencing with Section 6300) of Division 5 of the Labor Code) for preventing the transmission of HIV, hepatitis B, and other blood-borne pathogens in health care settings. As necessary, the board shall consult with the Medical Board of California, the California Board of Podiatric Medicine, the Board of Dental Examiners of California, the Board of Registered Nursing, and the Board of Vocational Nursing and Psychiatric Technicians, to encourage appropriate consistency in the implementation of this subdivision.

The board shall seek to ensure that licensees are informed of the responsibility of licensees and others to follow infection control guidelines, and of the most recent scientifically recognized safeguards for minimizing the risk of transmission of blood-borne infectious diseases.

(n) The commission of verbal abuse or sexual harassment.

SEC. 12. Section 2660.2 is added to the Business and Professions Code, to read:

2660.2. (a) The board may refuse a license to any applicant guilty of unprofessional conduct or sexual activity referred to in Section 2660.1. The board may, in its sole discretion, issue a probationary license to any applicant for a license who is guilty of unprofessional conduct but who has met all other requirements for licensure. The board may issue the license subject to any terms or conditions not contrary to public policy, including, but not limited to, the following:

(1) Medical or psychiatric evaluation.

(2) Continuing medical or psychiatric treatment.

(3) Restriction of the type or circumstances of practice.

(4) Continuing participation in a board-approved rehabilitation program.

(5) Abstention from the use of alcohol or drugs.

(6) Random fluid testing for alcohol or drugs.

(7) Compliance with laws and regulations governing the practice of physical therapy.

(b) The applicant shall have the right to appeal the denial, or the issuance with terms and conditions, of any license in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the board shall have all the powers granted therein. The action shall be final, except that the propriety of the action is subject to review by the superior court pursuant to Section 1094.5 of the Code of Civil Procedure.

SEC. 13. Section 2661.6 is added to the Business and Professions Code, to read:

2661.6. (a) The board shall establish a probation monitoring program to monitor probationary licenses.

(b) The program may employ nonpeace officer staff to perform its probation monitoring.

(c) The program shall be funded with moneys in the Physical Therapy Fund.

SEC. 14. Section 2684 of the Business and Professions Code is amended to read:

2684. (a) Notwithstanding Section 2422, any license or approval for the practice of physical therapy shall expire at 12 midnight on the last day of the birth month of the licensee or holder of the approval during the second year of a two-year term, if not renewed.

(b) To renew an unexpired license or approval, the licensee or the holder of the approval shall, on or before the dates on which it would otherwise expire, apply for renewal on a form prescribed by the board and pay the prescribed renewal fee. The licensee shall disclose on his or her license renewal application any misdemeanor or other criminal offense for which he or she has been found guilty or to which he or she has pleaded guilty or no contest.

(c) A license that has expired may be renewed within five years upon payment of all accrued and unpaid renewal fees.

SEC. 15. Section 3010 of the Business and Professions Code is amended to read:

3010. There is in the Department of Consumer Affairs a State Board of Optometry in which the enforcement of this chapter is vested. The board consists of nine members, three of whom shall be public members.

Six members of the board shall constitute a quorum.

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

The repeal of this section renders the board subject to the review required by Division 1.2 (commencing with Section 473).

SEC. 16. Section 3010.1 is added to the Business and Professions Code, to read:

3010.1. (a) There is in the Department of Consumer Affairs a State Board of Optometry in which the enforcement of this chapter is vested. The board consists of 11 members, five of whom shall be public members.

Six members of the board shall constitute a quorum.

(b) The board shall, with respect to conducting investigations, inquiries, and disciplinary actions and proceedings, have the authority previously vested in the board as created pursuant to Section 3010. The board may enforce any disciplinary actions undertaken by that board.

(c) This section shall remain in effect only until July 1, 2005, 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. 17. Section 3013 of the Business and Professions Code is amended to read:

3013. (a) Each member of the board shall hold office for a term of four years, and shall serve until the appointment and qualification of his or her successor or until one year shall have elapsed since the expiration of the term for which he or she was appointed, whichever first occurs.

(b) Vacancies occurring shall be filled by appointment for the unexpired term.

(c) The Governor shall appoint three of the public members and the six members qualified as provided in Section 3011. The Senate Rules Committee and the Speaker of the Assembly shall each appoint a public member, and their initial appointment shall be made to fill, respectively, the first and second public member vacancies which occur on or after January 1, 1983.

(d) No board member serving between January 1, 2000, and June 1, 2002, inclusive, shall be eligible for reappointment.

(e) For initial appointments made on or after January 1, 2003, one of the public members appointed by the Governor and two of the professional members shall serve terms of one year. One of the public members appointed by the Governor and two of the professional members shall serve terms of three years. The remaining public member appointed by the Governor and the remaining two professional members shall serve terms of four years. The public members appointed by the Senate Committee on Rules and the Speaker of the Assembly shall each serve for a term of four years.

SEC. 18. Section 3014.5 of the Business and Professions Code is amended to read:

3014.5. The board may appoint a person exempt from civil service who shall be designated as an executive officer and who shall exercise the powers and perform the duties delegated by the board and vested in him or her by this chapter.

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

The repeal of this section renders the board subject to the review required by Division 1.2 (commencing with Section 473).

SEC. 19. Section 3014.6 is added to the Business and Professions Code, to read:

3014.6. (a) 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.

(b) This section 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. 20. Section 3025.6 is added to the Business and Professions Code, to read:

3025.6. The board may adopt regulations clarifying the level of training and the level of supervision of assistants.

SEC. 21. Section 3710 of the Business and Professions Code is amended to read:

3710. The Respiratory Care Board of California, hereafter referred to as the board, shall enforce and administer this chapter.

This section shall become inoperative on July 1, 2007, and, as of January 1, 2008, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2008, deletes or extends the dates on which it becomes inoperative and is repealed.

The repeal of this section renders the board subject to the review required by Division 1.2 (commencing with Section 473).

SEC. 22. Section 3712.5 of the Business and Professions Code is repealed.

SEC. 23. Section 3716 of the Business and Professions Code is amended to read:

3716. The board may employ an executive officer exempt from civil service and, subject to the provisions of law relating to civil service, clerical assistants and, except as provided in Section 159.5, other employees as it may deem necessary to carry out its powers and duties.

This section shall become inoperative on July 1, 2007, and, as of January 1, 2008, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2008, deletes or extends the dates on which it becomes inoperative and is repealed.

The repeal of this section renders the board subject to the review required by Division 1.2 (commencing with Section 473).

SEC. 24. Section 3717 of the Business and Professions Code is amended to read:

3717. (a) The board, or any licensed respiratory care practitioner, enforcement staff, or investigative unit appointed by the board, may inspect, or require reports from, a general or specialized hospital or any other facility or corporation providing respiratory care, treatment, or services and the respiratory care staff thereof, with respect to the respiratory care, treatment, services, or facilities provided therein, or the employment of staff providing the respiratory care, treatment, or services, and may inspect and copy respiratory care patient records with respect to that care, treatment, services, or facilities. The authority to make inspections and to require reports as provided by this section is subject to the restrictions against disclosure contained in Section 2225. Those persons may also inspect and copy employment records relevant to an official investigation provided that the written request to inspect the records specifies the portion of the records to be inspected.

(b) The failure of an employer to provide documents as required by this section is punishable by an administrative fine not to exceed ten thousand dollars ($10,000) per violation. This penalty shall be in addition to, and not in lieu of, any other civil or criminal remedies.

SEC. 25. Section 3718 of the Business and Professions Code is amended to read:

3718. The board shall issue, deny, suspend, and revoke licenses to practice respiratory care as provided in this chapter.

SEC. 26. Section 3735.3 of the Business and Professions Code is amended to read:

3735.3. An applicant for a license as a respiratory care practitioner may not be scheduled to sit for the examination until verification from the program director, in a form acceptable to the board, declaring that the applicant has completed his or her respiratory training program and has met all the educational requirements for the awarding of an associate degree is received in the board's office. An official transcript from the educational institution's registrar's office shall be submitted to the board prior to the issuance of a license as a respiratory care practitioner.

SEC. 27. Section 3740 of the Business and Professions Code is amended to read:

3740. (a) Except as otherwise provided in this chapter, all applicants for licensure under this chapter shall have completed a board approved respiratory care program and been awarded a minimum of an associate degree.

(b) Notwithstanding subdivision (a), meeting the following qualifications shall be deemed equivalent to the required education:

(1) Enrollment in an approved baccalaureate degree program.

(2) Completion of science, general academic, and respiratory therapy course work commensurate with the requirements for an associate degree in subdivision (a).

(c) An applicant whose application is based on a diploma issued to the applicant by a foreign respiratory therapy school or a certificate or license issued by another state, district, or territory of the United States, shall furnish documentary evidence, satisfactory to the board, that he or she has completed a respiratory therapy school or a course of professional instruction equivalent to that required in subdivision (a), for a respiratory care practitioner applicant.

(d) Education programs for respiratory care that are accredited programs in public or private postsecondary education institutions or universities accredited by a regional accreditation agency or association recognized by the United States Department of Education and the Commission on Accreditation of Allied Health Education Programs, as verified by the board biannually, may be considered approved programs by the board unless the board determines otherwise.

(e) A school shall give the director of a respiratory care program adequate release time to perform his or her administrative duties consistent with the established policies of the educational institution.

(f) Satisfactory evidence as to educational qualifications shall take the form of certified transcripts of the applicant's college record mailed directly to the board from the educational institution. However, the board may require an evaluation of educational credentials by an evaluation service approved by the board.

(g) At the board's discretion, it may waive its educational requirements if evidence is presented and the board deems it as meeting the current educational requirements that will ensure the safe and competent practice of respiratory care. This evidence may include, but is not limited to:

(1) Work experience.

(2) Good standing of licensure in another state.

(3) Previous good standing of licensure in the State of California.

(h) Nothing contained in this section shall prohibit the board from disapproving any respiratory therapy school, nor from denying the applicant if the instruction received by the applicant or the courses were not equivalent to that required by the board.

SEC. 28. Section 3750.5 of the Business and Professions Code is amended to read:

3750.5. In addition to any other grounds specified in this chapter, the board may deny, suspend, or revoke the license of any applicant or licenseholder who has done any of the following:

(a) Obtained or possessed in violation of law, or except as directed by a licensed physician and surgeon, dentist, or podiatrist administered to

himself or herself, or furnished or administered to another, any controlled substances as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code, or any dangerous drug as defined in Article 7 (commencing with Section 4210) of Chapter 9 of this code.

(b) Used any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code, or any dangerous drug as defined in Article 7 (commencing with Section 4210) of Chapter 9 of this code.

(c) Applied for employment or worked in any health care profession or environment while under the influence of alcohol.

(d) Been convicted of a criminal offense involving the consumption or self-administration of any of the substances described in subdivisions (a) and (b), or the possession of, or falsification of a record pertaining to, the substances described in subdivision (a), in which event the record of the conviction is conclusive evidence thereof.

(e) Been committed or confined by a court of competent jurisdiction for intemperate use of or addiction to the use of any of the substances described in subdivisions (a), (b), and (c), in which event the court order of commitment or confinement is prima facie evidence of that commitment or confinement.

(f) Falsified, or made grossly incorrect, grossly inconsistent, or unintelligible entries in any hospital, patient, or other record pertaining to the substances described in subdivision (a).

SEC. 29. Section 3750.6 of the Business and Professions Code, as added by Section 18 of Chapter 1274 of the Statutes of 1994, is repealed.

SEC. 30. Section 3751.1 is added to the Business and Professions Code, to read:

3751.1. (a) Notwithstanding the time periods set forth in subdivision (a) of Section 3751, the holder of a conditional or probationary license issued prior to February 1, 2002, on grounds that did not include a violation of subdivision (e), (f), (h), (i), (k), (*l*), (n), (o), or (p) of Section 3750, a violation of Section 3752.6, or a violation of Section 3755, may submit a petition to terminate probation prior to December 31, 2003.

(b) This section shall be repealed on January 1, 2004, unless a later enacted statute, that becomes operative on or before January 1, 2004, deletes or extends that date.

SEC. 31. Section 3753.1 of the Business and Professions Code is amended to read:

3753.1. (a) An administrative disciplinary decision imposing terms of probation may include, among other things, a requirement that the licensee-probationer pay the monetary costs associated with monitoring the probation.

(b) The board shall not renew or reinstate the license of any licensee who has failed to pay all of the costs ordered under this section once a licensee has served his or her term of probation.

SEC. 32. Section 3758.6 of the Business and Professions Code is amended to read:

3758.6. (a) In addition to the reporting required under Section 3758, an employer shall also report to the board the name, professional licensure type and number, and title of the person supervising the licensee who has been suspended or terminated for cause, as defined in subdivision (b) of Section 3758. If the supervisor is a licensee under this chapter, the board shall investigate whether due care was exercised by that supervisor in accordance with this chapter. If the supervisor is a health professional, licensed by another licensing board under this division, the employer shall report the name of that supervisor and any and all information pertaining to the suspension or termination for cause of the person licensed under this chapter to the appropriate licensing board.

(b) The failure of an employer to make a report required by this section is punishable by an administrative fine not to exceed ten thousand dollars ($10,000) per violation.

SEC. 33. Section 3761 of the Business and Professions Code is amended to read:

3761. (a) No person may represent himself or herself to be a respiratory care practitioner without a license granted under this chapter, except as otherwise provided in this chapter.

(b) No person or corporation shall knowingly employ a person who holds himself or herself out to be a respiratory care practitioner without a license granted under this chapter, except as otherwise provided in this chapter.

SEC. 34. Section 3766 is added to the Business and Professions Code, to read:

3766. (a) The board may issue a citation containing an order of abatement and civil penalties against a person who acts in the capacity of, or engages in the business of, a respiratory care practitioner in this state without having a license in good standing issued pursuant to this chapter.

(b) The board may issue a citation containing an order of abatement and civil penalties against a person employing or contracting with a person who acts in the capacity of, or engages in the business of, a respiratory care practitioner in this state without having a license in good standing issued pursuant to this chapter.

SEC. 35. Section 3767 is added to the Business and Professions Code, to read:

3767. (a) The board shall issue a citation to a person and to his or her employer or contractor, if, upon inspection or investigation, either upon complaint or otherwise, the following conditions are met:

(1) The board has probable cause to believe that the person is acting in the capacity of, or engaging in the practice of, a respiratory care practitioner in this state without having a license in good standing issued pursuant to this chapter.

(2) The person is not otherwise exempted from the provisions of this chapter.

(b) Each citation issued pursuant to subdivision (a) shall meet all of the following requirements:

(1) Be in writing and describe with particularity the basis of the citation.

(2) 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).

(c) A person served with a citation may appeal to the board within 15 calendar days after service of the citation with respect to any of the following:

(1) The violations alleged.

(2) The scope of the order of abatement.

(3) The amount of the civil penalty assessed.

(d) If, within 15 calendar days after service of the citation, the person cited fails to notify the board that he or she intends to appeal the citation, the citation shall be deemed a final order of the board and not subject to review by any court or agency. The board may extend the 15-day period for good cause.

(e) (1) If a person cited under this section notifies the board in a timely manner that he or she intends to contest the citation, the board shall afford an opportunity for a hearing.

(2) The board shall thereafter issue a decision, based on findings of fact, affirming, modifying, or vacating the citation, or directing other appropriate relief.

(f) With the approval of the board, the executive officer shall prescribe procedures for the issuance and appeal of a citation and procedures for a hearing under this section. The 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.

(g) The sanctions authorized under this section shall be separate from and in addition to, any other civil or criminal remedies.

SEC. 36. Section 3768 is added to the Business and Professions Code, to read:

3768. (a) After the exhaustion of the review procedures provided for in Section 3767, and as adopted by regulation, the board may apply to the appropriate superior court for both of the following:

(1) A judgment in the amount of the civil penalty.

(2) An order compelling the cited person to comply with the order of abatement.

(b) The application described in subdivision (a) shall include a certified copy of the final order of the board.

(c) The application described in subdivision (a) shall constitute a sufficient showing to warrant the issuance of the judgment and order.

(d) The board may employ collection agencies or other methods in order to collect civil penalties.

SEC. 37. Section 3770 of the Business and Professions Code is amended to read:

3770. The department shall keep a record of its proceedings under this chapter, and a register of all persons licensed under it. The register shall show the name of every living licensed respiratory care practitioner, his or her last known place of residence, or address of record, and the date and number of his or her certificate as a respiratory care practitioner. The department shall, once every two years, compile a list of respiratory care practitioners authorized to practice respiratory care in the state. Any interested person is entitled to obtain a copy of that list upon application to the department and payment of an amount as may be fixed by the department, which amount shall not exceed the cost of the list so furnished.

SEC. 38. Section 3774 of the Business and Professions Code is amended to read:

3774. On or before the birthday of a licensed practitioner in every other year, following the initial licensure, the board shall mail to each practitioner licensed under this chapter, at the latest address furnished by the licensed practitioner to the executive officer of the board, a notice stating the amount of the renewal fee and the date on which it is due. The notice shall state that failure to pay the renewal fee on or before the due date and submit evidence of compliance with Sections 3719 and 3773 shall result in expiration of the license.

Each license not renewed in accordance with this section shall expire but may within a period of three years thereafter be reinstated upon payment of all accrued and unpaid renewal fees and penalty fees required by this chapter. The board may also require submission of proof of the applicant's qualifications, except that during the three-year period no examination shall be required as a condition for the reinstatement of any expired license that has lapsed solely by reason of nonpayment of the renewal fee.

SEC. 39. Section 3775.1 of the Business and Professions Code is repealed.

SEC. 40. Section 3777 of the Business and Professions Code is amended to read:

3777. Where an applicant is issued a license to practice respiratory care, and it is later discovered that all required fees have not been paid, the license shall not be renewed or reinstated unless all past and current required fees have been paid.

SEC. 41. Section 5061 of the Business and Professions Code, as amended by Assembly Bill 270 of the 2001–02 Regular Session, is amended to read:

5061. (a) Except as expressly permitted by this section, a person engaged in the practice of public accountancy shall not: (1) pay a fee or commission to obtain a client or (2) accept a fee or commission for referring a client to the products or services of a third party.

(b) A person engaged in the practice of public accountancy who is not performing any of the services set forth in subdivision (c) and who complies with the disclosure requirements of subdivision (d) may accept a fee or commission for providing a client with the products or services of a third party where the products or services of a third party are provided in conjunction with professional services provided to the client by the person engaged in the practice of public accountancy. Nothing in this subdivision shall be construed to permit the solicitation or acceptance of any fee or commission solely for the referral of a client to a third party.

(c) A person engaged in the practice of public accountancy is prohibited from performing services for a client or an officer or director of a client, or a client-sponsored retirement plan, for a commission or from receiving a commission from a client or an officer or director of a client, or a client-sponsored retirement plan, during the period in which the person also performs for that client or officer or director of that client, or client-sponsored retirement plan, any of the services listed below and during the period covered by any historical financial statements involved in those listed services:

(1) An audit or review of a financial statement.

(2) A compilation of a financial statement when that person expects, or reasonably might expect, that a third party will use the financial statement and the compilation report does not disclose a lack of independence.

(3) An examination of prospective financial information.

For purposes of this subdivision, ''director'' means any person as defined under Section 164 of the Corporations Code and ''officer'' means any individual reported to a regulatory agency as an officer of a corporation. However, ''director'' and ''officer'' does not include a

director or officer of a nonprofit corporation, or a corporation that meets the small business workforce or annual receipts requirements of Section 1896 of Title 2 of the California Code of Regulations.

(d) A person engaged in the practice of public accountancy who is not prohibited from performing services for a commission, or from receiving a commission, and who is paid or expects to be paid a commission, shall disclose that fact to any client or entity to whom the person engaged in the practice of public accountancy recommends or refers a product or service to which the commission relates.

(e) The board shall adopt regulations to implement, interpret, and make specific the provisions of this section including, but not limited to, regulations specifying the terms of any disclosure required by subdivision (d), the manner in which the disclosure shall be made, and other matters regarding the disclosure that the board deems appropriate. These regulations shall require, at a minimum, that a disclosure shall comply with all of the following:

(1) Be in writing and be clear and conspicuous.

(2) Be signed by the recipient of the product or service.

(3) State the amount of the commission or the basis on which it will be computed.

(4) Identify the source of the payment and the relationship between the source of the payment and the person receiving the payment.

(5) Be presented to the client at or prior to the time the recommendation of the product or service is made.

(f) For purposes of this section, ''fee'' includes, but is not limited to, a commission, rebate, preference, discount, or other consideration, whether in the form of money or otherwise.

(g) This section shall not prohibit payments for the purchase of any accounting practice or retirement payments to individuals presently or formerly engaged in the practice of public accountancy or payments to their heirs or estates.

SEC. 42. Section 5108 of the Business and Professions Code, as added by Assembly Bill 270 of the 2001–02 Regular Session, is amended to read:

5108. In connection with any investigation or action authorized by this chapter, the board may issue subpoenas for the attendance of witnesses and the production of papers, books, accounts, documents and testimony pertinent or material to its inquiry, investigation, hearing, proceeding, or action conducted in any part of the state.

SEC. 43. Section 6710 of the Business and Professions Code is amended to read:

6710. (a) There is in the Department of Consumer Affairs a Board for Professional Engineers and Land Surveyors, which consists of 13 members.

(b) Any reference in any law or regulation to the Board of Registration for Professional Engineers and Land Surveyors is deemed to refer to the Board for Professional Engineers and Land Surveyors.

(c) This section shall become inoperative on July 1, 2005, and, as of January 1, 2006, is repealed, unless a later enacted statute, that becomes effective on or before January 1, 2006, deletes or extends the dates on which it becomes inoperative and is repealed. The repeal of this section renders the board subject to the review required by Division 1.2 (commencing with Section 473).

SEC. 44. Section 6714 of the Business and Professions Code is amended to read:

6714. The board shall appoint an executive officer at a salary to be fixed and determined by the board with the approval of the Director of Finance.

This section shall become inoperative on July 1, 2005, and, as of January 1, 2006, is repealed, unless a later enacted statute, that becomes effective on or before January 1, 2006, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 45. Section 8710 of the Business and Professions Code is amended to read:

8710. (a) The Board for Professional Engineers and Land Surveyors is vested with power to administer the provisions and requirements of this chapter, and may make and enforce rules and regulations that are reasonably necessary to carry out its provisions.

(b) The board may adopt rules and regulations of professional conduct that are not inconsistent with state and federal law. The rules and regulations may include definitions of incompetence and negligence. Every person who holds a license or certificate issued by the board pursuant to this chapter, or a license or certificate issued to a civil engineer pursuant to Chapter 7 (commencing with Section 6700), shall be governed by these rules and regulations.

(c) This section shall become inoperative on July 1, 2005, and, as of January 1, 2006, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 2006, deletes or extends the dates on which it becomes inoperative and is repealed. The repeal of this section shall render the board subject to the review required by Division 1.2 (commencing with Section 473).

SEC. 46. Section 22253 of the Business and Professions Code is amended to read:

22253. (a) It is a violation of this chapter for a tax preparer to do any of the following:

(1) Fail to register as a tax preparer with the council.

(2) Make, or authorize the making of, any statement or representation, oral or written or recorded by any means, which is

intended to induce persons to use the tax preparation service of the tax preparer, which statement or representation is fraudulent, untrue, or misleading.

(3) Obtain the signature of a customer to a tax return or authorizing document which contains blank spaces to be filled in after it has been signed.

(4) Fail or refuse to give a customer, for his or her own records, a copy of any document requiring the customer's signature, within a reasonable time after the customer signs the document.

(5) Fail to maintain a copy of any tax return prepared for a customer for four years from the date of completion or the due date of the return, whichever is later.

(6) Engage in advertising practices which are fraudulent, untrue, or misleading, including, but not limited to, assertions that the bond required by Section 22250 in any way implies licensure or endorsement of a tax preparer by the State of California.

(7) Violate Section 17530.5 or 17530.6.

(8) Violate Section 7216 of Title 26 of the United States Code.

(9) Fail to sign a customer's tax return when payment for services rendered has been made.

(10) Fail to return, upon the demand by or on behalf of a customer, records or other data provided to the tax preparer by the customer.

(11) Knowingly give false or misleading information to the consumer pursuant to Section 22252, or give false or misleading information to the surety company pursuant to subdivision (a) of Section 22250, or give false or misleading information to the California Tax Education Council pursuant to Section 22255.

(b) Each violation of this section constitutes a separate offense.

SEC. 47. Section 22253.2 is added to the Business and Professions Code, to read:

22253.2. (a) The Franchise Tax Board may notify the California Tax Education Council when it identifies an individual who has violated paragraph (1) of subdivision (a) of Section 22253.

(b) The California Tax Education Council shall then notify the Attorney General, a district attorney, or a city attorney. Those entities may do any of the following:

(1) Cite individuals preparing tax returns in violation of subdivision (a) of Section 22253.

(2) Levy a fine up to one thousand dollars ($1,000) per violation.

(3) Issue a cease and desist order, which shall remain in effect until the individual has come into compliance with the provisions of paragraph (1) of subdivision (a) of Section 22253.

(c) The California Tax Education Council may enter into an agreement with the Franchise Tax Board to provide reimbursement to

the Franchise Tax Board for any expenses incurred by the Franchise Tax Board to implement this section.

SEC. 48. Section 123105 of the Health and Safety Code is amended to read:

123105. As used in this chapter:

(a) ''Health care provider'' means any of the following:

(1) A health facility licensed pursuant to Chapter 2 (commencing with Section 1250) of Division 2.

(2) A clinic licensed pursuant to Chapter 1 (commencing with Section 1200) of Division 2.

(3) A home health agency licensed pursuant to Chapter 8 (commencing with Section 1725) of Division 2.

(4) A physician and surgeon licensed pursuant to Chapter 5 (commencing with Section 2000) of Division 2 of the Business and Professions Code or pursuant to the Osteopathic Act.

(5) A podiatrist licensed pursuant to Article 22 (commencing with Section 2460) of Chapter 5 of Division 2 of the Business and Professions Code.

(6) A dentist licensed pursuant to Chapter 4 (commencing with Section 1600) of Division 2 of the Business and Professions Code.

(7) A psychologist licensed pursuant to Chapter 6.6 (commencing with Section 2900) of Division 2 of the Business and Professions Code.

(8) An optometrist licensed pursuant to Chapter 7 (commencing with Section 3000) of Division 2 of the Business and Professions Code.

(9) A chiropractor licensed pursuant to the Chiropractic Initiative Act.

(10) A marriage, family, and child counselor licensed pursuant to Chapter 13 (commencing with Section 4980) of Division 2 of the Business and Professions Code.

(11) A clinical social worker licensed pursuant to Chapter 14 (commencing with Section 4990) of Division 2 of the Business and Professions Code.

(12) A physical therapist licensed pursuant to Chapter 5.7 (commencing with Section 2600) of Division 2 of the Business and Professions Code.

(b) ''Mental health records'' means patient records, or discrete portions thereof, specifically relating to evaluation or treatment of a mental disorder. ''Mental health records'' includes, but is not limited to, all alcohol and drug abuse records.

(c) ''Patient'' means a patient or former patient of a health care provider.

(d) ''Patient records'' means records in any form or medium maintained by, or in the custody or control of, a health care provider relating to the health history, diagnosis, or condition of a patient, or

relating to treatment provided or proposed to be provided to the patient. ''Patient records'' includes only records pertaining to the patient requesting the records or whose representative requests the records. ''Patient records'' does not include information given in confidence to a health care provider by a person other than another health care provider or the patient, and that material may be removed from any records prior to inspection or copying under Section 123110 or 123115. ''Patient records'' does not include information contained in aggregate form, such as indices, registers, or logs.

(e) ''Patient's representative'' or ''representative'' means a parent or the guardian of a minor who is a patient, or the guardian or conservator of the person of an adult patient, or the beneficiary or personal representative of a deceased patient.

(f) ''Alcohol and drug abuse records'' means patient records, or discrete portions thereof, specifically relating to evaluation and treatment of alcoholism or drug abuse.

SEC. 49. Section 123105 of the Health and Safety Code is amended to read:

123105. As used in this chapter:

(a) ''Health care provider'' means any of the following:

(1) A health facility licensed pursuant to Chapter 2 (commencing with Section 1250) of Division 2.

(2) A clinic licensed pursuant to Chapter 1 (commencing with Section 1200) of Division 2.

(3) A home health agency licensed pursuant to Chapter 8 (commencing with Section 1725) of Division 2.

(4) A physician and surgeon licensed pursuant to Chapter 5 (commencing with Section 2000) of Division 2 of the Business and Professions Code or pursuant to the Osteopathic Act.

(5) A podiatrist licensed pursuant to Article 22 (commencing with Section 2460) of Chapter 5 of Division 2 of the Business and Professions Code.

(6) A dentist licensed pursuant to Chapter 4 (commencing with Section 1600) of Division 2 of the Business and Professions Code.

(7) A psychologist licensed pursuant to Chapter 6.6 (commencing with Section 2900) of Division 2 of the Business and Professions Code.

(8) An optometrist licensed pursuant to Chapter 7 (commencing with Section 3000) of Division 2 of the Business and Professions Code.

(9) A chiropractor licensed pursuant to the Chiropractic Initiative Act.

(10) A marriage and family therapist licensed pursuant to Chapter 13 (commencing with Section 4980) of Division 2 of the Business and Professions Code.

(11) A clinical social worker licensed pursuant to Chapter 14 (commencing with Section 4990) of Division 2 of the Business and Professions Code.

(12) A physical therapist licensed pursuant to Chapter 5.7 (commencing with Section 2600) of Division 2 of the Business and Professions Code.

(b) ''Mental health records'' means patient records, or discrete portions thereof, specifically relating to evaluation or treatment of a mental disorder. ''Mental health records'' includes, but is not limited to, all alcohol and drug abuse records.

(c) ''Patient'' means a patient or former patient of a health care provider.

(d) ''Patient records'' means records in any form or medium maintained by, or in the custody or control of, a health care provider relating to the health history, diagnosis, or condition of a patient, or relating to treatment provided or proposed to be provided to the patient. ''Patient records'' includes only records pertaining to the patient requesting the records or whose representative requests the records. ''Patient records'' does not include information given in confidence to a health care provider by a person other than another health care provider or the patient, and that material may be removed from any records prior to inspection or copying under Section 123110 or 123115. ''Patient records'' does not include information contained in aggregate form, such as indices, registers, or logs.

(e) ''Patient's representative'' or ''representative'' means a parent or the guardian of a minor who is a patient, or the guardian or conservator of the person of an adult patient, or the beneficiary or personal representative of a deceased patient.

(f) ''Alcohol and drug abuse records'' means patient records, or discrete portions thereof, specifically relating to evaluation and treatment of alcoholism or drug abuse.

SEC. 50. (a) Section 2.5 of this bill incorporates amendments to Section 800 of the Business and Professions Code proposed by both this bill and SB 1950. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2003, (2) each bill amends Section 800 of the Business and Professions Code, and (3) this bill is enacted after SB 1950, in which case Section 2 of this bill shall not become operative.

(b) Section 46.5 of this bill incorporates amendments to Section 123105 of the Health and Safety Code proposed by both this bill and SB 2026. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2003, (2) each bill amends Section 123105 of the Health and Safety Code, and (3) this bill is enacted

after SB 2026, in which case Section 46 of this bill shall not become operative.

CHAPTER 1151

An act to amend Sections 7301, 7313, 7335, 7353, 7362, 7400, 7403, 7408, 7410, 7411, 7424, and 7426.5 of, to add Section 7403.5 to, and to repeal Section 7315 of, the Business and Professions Code, relating to barbering and cosmetology.

[Approved by Governor September 30, 2002. Filed with Secretary of State September 30, 2002.]

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

SECTION 1. Section 7301 of the Business and Professions Code is amended to read:

7301. This chapter constitutes the chapter on hair, skin, nail care, and electrolysis and may be known and cited as the Barbering and Cosmetology Act.

SEC. 2. Section 7313 of the Business and Professions Code is amended to read:

7313. (a) (1) To ensure compliance with the laws and regulations of this chapter, the bureau chief and authorized representatives shall, except as provided by Section 159.5, have access to, and shall inspect, any establishment or mobile unit during business hours or at any time in which barbering, cosmetology, or electrolysis are being performed. It is the intent of the Legislature that inspections be conducted on Saturdays and Sundays as well as weekdays, if collective bargaining agreements and civil service provisions permit.

(2) The bureau shall maintain a program of random and targeted inspections of establishments to ensure compliance with applicable laws relating to the public health and safety and the conduct and operation of establishments. The bureau or its authorized representatives shall inspect establishments to reasonably determine compliance levels and to identify market conditions that require targeted enforcement. The bureau shall not reduce the number of employees assigned to perform random inspections, targeted inspections, and investigations relating to field operations below the level funded by the annual Budget Act and described in supporting budget documents, and shall not redirect funds or personnel-years allocated to those inspection and investigation purposes to other purposes.

(b) To ensure compliance with health and safety requirements adopted by the bureau, the bureau chief and authorized representatives shall, except as provided in Section 159.5, have access to, and shall inspect the premises of, all schools in which the practice of barbering, cosmetology, or electrolysis is performed on the public. Citations shall be issued to schools for violations of regulations governing conditions related to the health and safety of patrons. A copy of the citation shall be provided to the Bureau for Private Postsecondary and Vocational Education.

SEC. 3. Section 7315 of the Business and Professions Code is repealed.

SEC. 4. Section 7335 of the Business and Professions Code is amended to read:

7335. (a) The license of an apprentice shall expire two years from the date the license was issued, or on the date the apprentice is issued a license following the license examination, or if the apprentice fails the license examination twice, on the date the results of the second examination are issued, whichever occurs first.

(b) An apprentice holding a valid, unexpired license may work not more than three months after completing the required training.

(c) The bureau may extend the two-year or three-month period described in subdivisions (a) and (b) upon a showing of good cause which shall include, but not be limited to, delays in applying for and taking the examination caused by the illness of, or accident to, the apprentice, or service in the Armed Forces of the United States.

SEC. 5. Section 7353 of the Business and Professions Code is amended to read:

7353. (a) (1) Within 90 days after issuance of the establishment license, the bureau or its agents or assistants shall inspect the establishment for compliance with the applicable requirements of this chapter and the applicable rules and regulations of the bureau adopted pursuant to this chapter.

(2) The bureau may inspect the establishment for which a license application has been made prior to the issuance of the license.

(b) The bureau shall maintain a program of random and targeted inspections of establishments to ensure compliance with applicable laws relating to the public health and safety and the conduct and operation of establishments.

(c) The bureau or its authorized representatives shall inspect establishments to reasonably determine compliance levels and to identify market conditions that require targeted enforcement.

(d) The bureau shall not reduce the number of employees assigned to perform random inspections, targeted inspections, and investigations relating to field operations below the level funded by the annual Budget

Act and described in supporting budget documents, and shall not redirect funds or personnel-years allocated to those inspection and investigation purposes to other purposes.

SEC. 6. Section 7362 of the Business and Professions Code is amended to read:

7362. (a) A school approved by the bureau is one which is licensed by the Bureau for Private Postsecondary and Vocational Education, or a public school in this state, and provides a course of instruction approved by the bureau.

(b) The bureau shall determine by regulation the required subjects of instruction to be completed in all approved courses, including the minimum hours of technical instruction and minimum number of practical operations for each subject, and shall determine how much training is required before a student may begin performing services on paying patrons.

SEC. 7. Section 7400 of the Business and Professions Code is amended to read:

7400. Every licensee of the bureau, except establishments shall, within 30 days after a change of address, notify the bureau of the new address, and, upon receipt of the notification, the bureau shall make the necessary changes in the register. If the address of record is the licensee's residence address, the licensee may provide the bureau with an alternate address to disclose to the public.

SEC. 8. Section 7403 of the Business and Professions Code is amended to read:

7403. (a) The bureau may revoke, suspend, or deny at any time any license required by this chapter on any of the grounds for disciplinary action provided in this article. The proceedings under this article 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 bureau shall have all the powers granted therein.

(b) In any case in which the administrative law judge recommends that the bureau revoke, suspend or deny a license, the administrative law judge may, upon presentation of suitable proof, order the licensee to pay the bureau the reasonable costs of the investigation and adjudication of the case. For purposes of this section, ''costs'' include charges by the bureau for investigating the case, charges incurred by the office of the Attorney General for investigating and presenting the case, and charges incurred by the Office of Administrative Hearings for hearing the case and issuing a proposed decision.

(c) The costs to be assessed shall be fixed by the administrative law judge and shall not, in any event, be increased by the bureau. When the bureau does not adopt a proposed decision and remands the case to an

administrative law judge, the administrative law judge shall not increase the amount of any costs assessed in the proposed decision.

(d) Persons who fail to pay costs shall not be issued a license or allowed to renew a license issued to them until all costs are paid.

(e) The bureau may enforce the order for payment in the superior court in the county where the administrative hearing was held. This right of enforcement shall be in addition to any other rights the bureau may have as to any licensee directed to pay costs.

(f) In any judicial action for the recovery of costs, proof of the bureau's decision shall be conclusive proof of the validity of the order of payment and the terms for payment.

(g) Notwithstanding any other provision of law, all costs recovered under this section shall be deposited in the bureau's contingent fund as a scheduled reimbursement in the fiscal year in which the costs are actually recovered.

SEC. 9. Section 7403.5 is added to the Business and Professions Code, to read:

7403.5. (a) In addition to the authority provided by Sections 494 and 7403, the bureau chief, in his or her discretion, may upon written notice immediately close any establishment which, upon completion of an inspection, is found to have health and safety violations of such a severe nature as to pose an immediate threat to public health and safety.

(b) The bureau chief shall issue a written notice of suspension of the establishment license including the grounds therefor and a notice of closure. The notice of closure shall be posted at the establishment so as to be clearly visible to the general public and to patrons.

(c) Upon issuance of the written notice of suspension of the establishment license, the establishment shall immediately close to the general public and to patrons and shall discontinue all operations until the suspension has been vacated by the bureau chief, the suspension expires, is superseded by an order issued under the authority of Section 494, or until the establishment no longer operates under this chapter.

(d) (1) Before issuing a suspension order under this section, the bureau chief shall, if practical, give the establishment notice and an opportunity to be heard. If no hearing is provided prior to the issuance of the suspension order, the establishment may request one after the suspension has been issued.

(2) Notice and hearing under this section may be oral or written, including notice and hearing by telephone, facsimile transmission, or other electronic means as the circumstances permit.

(e) Upon correction of violations the establishment may request that the written notice of suspension be terminated. The bureau chief shall conduct an inspection within 48 hours to determine whether the written notice of suspension may be terminated. If the written notice of

suspension is not terminated upon inspection for failure of the establishment to correct violations, a charge of one hundred dollars ($100) shall be imposed for each subsequent inspection under this section.

(f) The notice of suspension shall remain posted until removed by the bureau chief, but shall be in effect for no longer than 30 days. Removal of the notice of suspension by any person other than the bureau chief or designated representative, or the refusal of an establishment to close upon issuance of the written notice of suspension of the establishment license is a violation of this chapter and may result in any sanctions authorized by this chapter.

SEC. 10. Section 7408 of the Business and Professions Code is amended to read:

7408. The bureau, through its duly authorized representatives, shall issue a citation with respect to any violation for which an administrative fine may be assessed. Each citation shall be in writing and shall describe with particularity the nature of the violation, including a reference to the specific provision alleged to have been violated. The administrative fine, if any, shall attach at the time the citation is written. The citation shall include an order to correct any condition or violation which lends itself to correction, as determined by the bureau pursuant to Section 7409.

SEC. 11. Section 7410 of the Business and Professions Code is amended to read:

7410. Persons to whom a citation is issued and an administrative fine assessed may appeal the citation to a disciplinary review committee established by regulation by the director. All appeals shall be submitted in writing to the bureau within 30 days of the date the citation was issued. Appeals of citations that are not submitted in a timely manner shall be rejected.

After a timely appeal has been filed with the bureau, the administrative fine, if any, shall be stayed until the appeal has been adjudicated.

Persons appealing a citation, or their appointed representatives, shall appear in person before the disciplinary review committee. The appellant may present written or oral evidence relating to the facts and circumstances relating to the citation that was issued. Following an appeal before a disciplinary review committee, the disciplinary review committee shall issue a decision, based on findings of fact, which may affirm, reduce, dismiss, or alter any charges filed in the citation. In no event shall the administrative fine be increased. The appellant shall be provided with a written copy of the disciplinary review committee's decision relating to the appeal.

SEC. 12. Section 7411 of the Business and Professions Code is amended to read:

7411. Persons receiving a decision from a disciplinary review committee may appeal the decision by filing a written request, within 30 days after receipt of the decision, to the bureau chief. Following a hearing to appeal the decision of a disciplinary review committee, the director shall thereafter issue a decision, based on findings of fact, affirming, modifying or vacating the citation or penalty, or directing other appropriate relief. In no event shall the administrative fine be increased. The hearing to contest the decision of a disciplinary review committee shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the director shall have all powers granted therein.

SEC. 13. Section 7424 of the Business and Professions Code is amended to read:

7424. The amounts of the fees payable under this chapter relating to licenses to operate an establishment are as follows:

(a) The application and initial license fee shall be not more than eighty dollars ($80).

(b) The renewal fee shall be not more than forty dollars ($40).

(c) The delinquency fee is 50 percent of the renewal fee in effect on the date of renewal.

(d) Any application and initial license fee for the change of ownership of an existing establishment may be established by the bureau in an amount less than the fee prescribed for a new establishment, but sufficient to cover the costs of processing the application and issuing the license.

SEC. 14. Section 7426.5 of the Business and Professions Code is amended to read:

7426.5. The bureau may, by regulation, divide the fees payable under this chapter relating to licenses into separate categories based upon processing functions, such as application review, examination administration, or license issuance, provided that the combined fees for those processing functions do not exceed the maximum amount prescribed by the license category.

The bureau may, by regulation, establish procedures whereby some or all of a fee submitted in connection with an application for licensure would be forfeited by an applicant who has withdrawn his or her application, fails to appear for an examination, or is required to retake an examination.

SEC. 15. This act shall become operative only if SB 1050 of the 2001–02 Regular Session is enacted and becomes effective on or before January 1, 2003.

CHAPTER 1152

An act to amend Sections 21151, 21537, 21540.5, 31469.1, 31469.3, 31470.2, 31787.5, and 31787.6 of, and to add Sections 20401.5, 20423.6, 22013.78, 31469.2, 31470.14, 45311, and 53217.6 to, the Government Code, relating to public employees' retirement, and making an appropriation therefor.

[Approved by Governor September 30, 2002. Filed with Secretary of State September 30, 2002.]

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

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

(a) As a matter of statewide importance, the safety and welfare of the people of California require that California's state and local prosecutors, state and local public defenders, and local public defender investigators be included in the safety retirement system in order to ensure that the highest quality of attorneys and investigators be attracted to, and retained in, these positions of public service, and in order to ensure that the administration of justice in the California criminal justice system is of the highest caliber and integrity.

(b) There is a public obligation of statewide importance to ensure that state and local prosecutors, state and local public defenders, and local public defender investigators, who are exposed to more than ordinary physical risks and mental stress in the performance of their duties, shall be uniformly classified for retirement purposes commensurate with the risks and stress of their positions.

(c) As a matter of statewide importance, it is necessary to ensure that state and local prosecutors, state and local public defenders, and local public defender investigators, who are incapacitated in the performance of their duties or by age, be replaced by the most qualified attorneys and investigators.

(d) To these ends, it is the intent of the Legislature in enacting this act that state and local prosecutors, state and local public defenders, and local public defender investigators be provided with a retirement classification and retirement benefits commensurate to those provided to law enforcement personnel who receive safety retirement, and that these statutes be liberally construed to enable local legislative bodies, including charter bodies, to implement the provisions of this legislation to achieve the purposes set forth in this section.

SEC. 2. Section 20401.5 is added to the Government Code, to read:

20401.5. (a) ''State safety member'' also includes state prosecutors and state public defenders.

(b) For purposes of this part, ''state prosecutor'' means a state officer or employee who meets all of the following criteria:

(1) He or she is employed by the Department of Justice, Office of the Attorney General.

(2) His or her job classification is Chief Assistant Attorney General, Senior Assistant Attorney General, Supervising Deputy Attorney General, Deputy Attorney General, or any other similar classification or title.

(3) His or her effective date of retirement is on or after the date the state employer and the bargaining unit elect to be subject to this section as provided in subdivision (f).

(c) For purposes of this part, ''state public defender'' means a state officer or employee who meets all of the following criteria.

(1) He or she is employed by the Office of the State Public Defender.

(2) His or her job classification is State Public Defender, Senior Deputy State Public Defender, Supervising Deputy State Public Defender, Deputy State Public Defender, or any other similar classification or title.

(3) His or her effective date of retirement is on or after the date the state employer and the bargaining unit elect to be subject to this section as provided in subdivision (f).

(d) Past state miscellaneous service performed by a state prosecutor or state public defender who becomes a state safety member pursuant to this section shall be converted to state safety service if the past service was rendered in a position that has subsequently been reclassified as a state safety position pursuant to this section. Any unfunded liability resulting from this section shall be paid by the employer.

(e) Notwithstanding any other provision of this part, state prosecutors and state public defenders shall be subject to the benefit formula contained in Section 21369.1, or any other benefit formula applicable to state safety members that does not provide benefits greater than those benefits provided under Section 21363.1.

(f) This section does not apply to any officers or employees described in subdivision (b) or (c) who are members of State Bargaining Unit 2 unless and until the state employer and the bargaining unit elect to be subject to this section by amendment to or by express provision in a memorandum of understanding entered into between the parties.

(g) This section does not apply to any officer or employee described in subdivision (b) or (c) who dies prior to the date the state employer and the bargaining unit elect to be subject to this section as provided in subdivision (f).

SEC. 3. Section 20423.6 is added to the Government Code, to read:

20423.6. (a) ''Local safety member'' also includes local prosecutors, local public defenders, and local public defender investigators.

(b) For purposes of this part, ''local prosecutor'' means any one of the following:

(1) A county officer or employee who meets all of the following criteria:

(A) He or she is or, on or after January 1, 2002, was employed in the office of the district attorney.

(B) His or her job classification is or, on or after January 1, 2002, was district attorney, deputy district attorney, chief deputy district attorney, senior deputy district attorney, assistant district attorney, chief assistant district attorney, senior assistant district attorney, or any other similar classification or title.

(C) His or her effective date of retirement is on or after the date this section becomes applicable to the member's contracting agency as provided in subdivision (g).

(2) A county officer or employee who meets all of the following criteria:

(A) He or she was employed in the office of a district attorney prior to the date the local child support agency transitioned from the district attorney to a new county department, as specified in Section 17304 of the Family Code.

(B) His or her job classification was district attorney, deputy district attorney, chief deputy district attorney, senior deputy district attorney, assistant district attorney, chief assistant district attorney, senior assistant district attorney, or any other similar classification or title.

(C) He or she is or, on or after January 1, 2002, was an attorney in a local child support agency, as defined in subdivision (h) of Section 17000 of the Family Code, with no break in service between employment by a district attorney and the local child support agency.

(D) His or her effective date of retirement is on or after the date this section becomes applicable to the member's contracting agency as provided in subdivision (g).

(3) A city officer or employee who meets all of the following criteria:

(A) He or she is or, on or after January 1, 2002, was employed in the office of the city attorney.

(B) He or she is or, on or after January 1, 2002, was primarily engaged in the active enforcement of criminal laws within any court operating in a county.

(C) His or her job classification is or, on or after January 1, 2002, was city attorney, deputy city attorney, chief deputy city attorney, assistant city attorney, chief assistant city attorney, or any other similar classification or title.

(D) His or her effective date of retirement is on or after the date this section becomes applicable to the member's contracting agency as provided in subdivision (g).

(c) For purposes of this part, ''local public defender'' means a city or county officer or employee who meets all of the following criteria:

(1) He or she is or, on or after January 1, 2002, was employed in the office of the public defender, the alternate public defender, or any similar office title.

(2) His or her job classification is or, on or after January 1, 2002, was public defender, deputy public defender, chief deputy public defender, senior deputy public defender, assistant public defender, chief assistant public defender, senior assistant public defender, or any other similar classification or title.

(3) His or her effective date of retirement is on or after the date this section becomes applicable to the member's contracting agency as provided in subdivision (g).

(d) For purposes of this part, ''local public defender investigator'' means a city or county officer or employee who meets all of the following criteria:

(1) He or she is or, on or after January 1, 2002, was employed in the office of the public defender, the alternate public defender, or any other similar office title.

(2) His or her job classification is or, on or after January 1, 2002, was inspector, investigator, detective, or any other similar classification or title.

(3) His or her principal duties are or, on or after January 1, 2002, were to investigate crime and criminal cases.

(4) His or her effective date of retirement is on or after the date this section becomes applicable to the member's contracting agency as provided in subdivision (g).

(e) Notwithstanding Section 20890, past local miscellaneous service performed by a local prosecutor, local public defender, or local public defender investigator who becomes a local safety member pursuant to this section shall be converted to local safety service if the past service was rendered in a position that has subsequently been reclassified as a safety position pursuant to this section. For local prosecutors described in paragraph (2) of subdivision (b), service in the office of a district attorney and a local child support agency shall be considered service for the district attorney for the purposes of this section. Any unfunded liability resulting from this section shall be paid by the employer.

(f) Notwithstanding any other provision of this part or any provision of the contracting agency's contract with the board, local prosecutors, local public defenders, and local public defender investigators shall be subject to the benefit formula contained in Section 21362, 21363, or

21363.1, or any other benefit formula applicable to local safety members that does not provide benefits greater than those benefits provided under Section 21363.1, as designated in the contract amendment or express contract provision described in subdivision (g).

(g) This section shall not apply to any officers and employees of a contracting agency or to the agency unless and until the contracting agency elects to be subject to 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. If a contracting agency elects to be subject to this section, the contracting agency shall include all local prosecutors, local public defenders, and local public defender investigators described in this section.

(h) This section does not apply to any officer or employee of a contracting agency who dies prior to the date the contracting agency elects to be subject to this section.

SEC. 4. Section 21151 of the Government Code is amended to read:

21151. (a) Any patrol, state safety, state industrial, state peace officer/firefighter, or local safety member incapacitated for the performance of duty as the result of an industrial disability shall be retired for disability, pursuant to this chapter, regardless of age or amount of service.

(b) This section also applies to local miscellaneous members if the contracting agency employing those members elects to be subject to this section by amendment to its contract.

(c) This section also applies to state miscellaneous members employed by the Department of Justice who perform the duties now performed in positions with the class title of Criminalist (Class Code 8466), or Senior Criminalist (Class Code 8478), or Criminalist Supervisor (Class Code 8477), or Criminalist Manager (Class Code 8467), Latent Print Analyst I (Class Code 8460), Latent Print Analyst II (Class Code 8472), or Latent Print Supervisor (Class Code 8473), and state miscellaneous members employed by the Department of the California Highway Patrol who perform the duties now performed in positions with the class title of Communications Operator I, California Highway Patrol (Class Code 1663), Communications Operator II, California Highway Patrol (Class Code 1664), Communications Supervisor I, California Highway Patrol (Class Code 1662), or Communications Supervisor II, California Highway Patrol (Class Code 1665), and state miscellaneous members whose disability resulted under the conditions specified in Sections 20046.5 and 20047.

(d) This section does not apply to local safety members described in Section 20423.6, unless this section has been made applicable to local miscellaneous members pursuant to subdivision (b).

(e) This section does not apply to state safety members described in Section 20401.5.

SEC. 4.5. Section 21151 of the Government Code is amended to read:

21151. (a) Any patrol, state safety, state industrial, state peace officer/firefighter, or local safety member incapacitated for the performance of duty as the result of an industrial disability shall be retired for disability, pursuant to this chapter, regardless of age or amount of service.

(b) This section also applies to local miscellaneous members if the contracting agency employing those members elects to be subject to this section by amendment to its contract.

(c) This section also applies to all of the following:

(1) State miscellaneous members employed by the Department of Justice who perform the duties now performed in positions with the class title of Criminalist (Class Code 8466), or Senior Criminalist (Class Code 8478), or Criminalist Supervisor (Class Code 8477), or Criminalist Manager (Class Code 8467), Latent Print Analyst I (Class Code 8460), Latent Print Analyst II (Class Code 8472), or Latent Print Supervisor (Class Code 8473).

(2) State miscellaneous members employed by the Department of the California Highway Patrol who perform the duties now performed in positions with the class title of Communications Operator I, California Highway Patrol (Class Code 1663), Communications Operator II, California Highway Patrol (Class Code 1664), Communications Supervisor I, California Highway Patrol (Class Code 1662), or Communications Supervisor II, California Highway Patrol (Class Code 1665).

(3) State miscellaneous members whose disability resulted under the conditions specified in Sections 20046.5 and 20047.

(4) State miscellaneous members in State Bargaining Unit 12 employed by the Department of Transportation.

(d) This section does not apply to local safety members described in Section 20423.6, unless this section has been made applicable to local miscellaneous members pursuant to subdivision (b).

(e) This section does not apply to state safety members described in Sections 20401.5.

SEC. 5. Section 21537 of the Government Code is amended to read:

21537. (a) The special death benefit is payable if the deceased was a patrol, state peace officer/firefighter, state safety, state industrial, or local safety member, if his or her death was industrial and if there is a survivor who qualifies under subdivision (b) of Section 21541. The Workers' Compensation Appeals Board, using the same procedures as

in workers' compensation hearings, shall in disputed cases determine whether the death of a member was industrial.

(b) The jurisdiction of the Workers' Compensation Appeals Board shall be limited solely to the issue of industrial causation, and this section shall not be construed to authorize the Workers' Compensation Appeals Board to award costs against this system pursuant to Section 4600, 5811, or any other provision of the Labor Code.

(c) This section does not apply to state safety members described in Section 20401.5 or local safety members described in Section 20423.6.

SEC. 6. Section 21540.5 of the Government Code is amended to read:

21540.5. (a) The special death benefit is also payable if the deceased was a state, school, or local miscellaneous member or a local safety member described in Section 20423.6 if the death of the member was a direct consequence of a violent act perpetrated on his or her person that arose out of and was in the course of his or her official duties and there is a survivor who qualifies under subdivision (b) of Section 21541. The Workers' Compensation Appeals Board, using the same procedure as in workers' compensation hearings, shall, in disputed cases determine whether the member's death was a direct consequence of a violent act perpetrated on his or her person that arose out of and in the course of his or her official duties.

(b) A natural parent of surviving children eligible to receive an allowance payable under this section is not required to become the guardian of surviving unmarried children under 18 years of age in order to be paid the benefits prescribed for those children.

(c) The jurisdiction of the Workers' Compensation Appeals shall be limited solely to the issue of industrial causation, and this section may not be construed to authorize the Workers' Compensation Appeals Board to award costs against this system pursuant to Section 4600 or 5811 or any other provision of the Labor Code.

(d) This section does not apply to a contracting agency nor its employees unless and until the agency elects to be 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.

SEC. 7. Section 22013.78 is added to the Government Code, to read:

22013.78. ''Policeman'' as used in this part also includes persons currently employed in classifications listed in Sections 20401.5, 20423.6, and 31469.2 for purposes of Section 218(d)(5)(A) of the Social Security Act (42 U.S.C. Sec. 418(d)(5)(A)).

SEC. 8. Section 31469.1 of the Government Code is amended to read:

31469.1. (a) ''County peace officer'' means the sheriff and any officer or employee of the sheriff's office of a county employed and qualifying as a constable or deputy constable or marshal or deputy marshal or deputy sheriff or equal or higher rank, irrespective of the duties to which that person may be assigned, excepting, however, those employees whose principal duties are those of a telephone operator, clerk, stenographer, machinist or mechanic.

(b) Any other provision in the Government Code to the contrary notwithstanding, ''county peace officer'' shall also include and mean any inspectors, detectives and investigators employed by the district attorney, whose principal duties are to investigate crime and criminal cases and to receive regular compensation for that service.

(c) ''County peace officer'' does not include a local prosecutor, local public defender, or local public defender investigator, as defined in Section 31469.2.

SEC. 9. Section 31469.2 is added to the Government Code, to read:

31469.2. (a) For purposes of this chapter, ''local prosecutor'' means any one of the following:

(1) A county officer or employee who meets all of the following criteria:

(A) He or she is or, on or after January 1, 2002, was employed in the office of the district attorney.

(B) His or her job classification is or, on or after January 1, 2002, was district attorney, deputy district attorney, chief deputy district attorney, senior deputy district attorney, assistant district attorney, chief assistant district attorney, senior assistant district attorney, or any other similar classification or title.

(C) His or her effective date of retirement is on or after the date Section 31470.14 becomes applicable in the county.

(2) A county officer or employee who meets all of the following criteria:

(A) He or she was employed in the office of a district attorney prior to the date the local child support agency transitioned from the district attorney to a new county department, as specified in Section 17304 of the Family Code.

(B) His or her job classification was district attorney, deputy district attorney, chief deputy district attorney, senior deputy district attorney, assistant district attorney, chief assistant district attorney, senior assistant district attorney, or any other similar classification or title.

(C) He or she is or, on or after January 1, 2002, was an attorney in a local child support agency, as defined in subdivision (h) of Section 17000 of the Family Code, with no break in service between employment by a district attorney and the local child support agency.

(D) His or her effective date of retirement is on or after the date Section 31470.14 becomes applicable in the county.

(3) A city officer or employee who meets all of the following criteria:

(A) He or she is or, on or after January 1, 2002, was employed in the office of the city attorney.

(B) He or she is or, on or after January 1, 2002, was primarily engaged in the active enforcement of criminal laws within any court operating in a county.

(C) His or her job classification is or, on or after January 1, 2002, was city attorney, deputy city attorney, chief deputy city attorney, assistant city attorney, chief assistant city attorney, or any other similar classification or title.

(D) His or her effective date or retirement is on or after the date Section 31470.14 becomes applicable in the county.

(b) For purposes of this chapter, ''local public defender'' means a city or county officer or employee who meets all of the following criteria:

(1) He or she is or, on or after January 1, 2002, was employed in the office of the public defender, the alternate public defender, or any similar office title.

(2) His or her job classification is or, on January 1, 2002, was public defender, deputy public defender, chief deputy public defender, senior deputy public defender, assistant public defender, chief assistant public defender, senior assistant public defender, or any other similar classification or title.

(3) His or her effective date of retirement is on or after the date Section 31470.14 becomes applicable in the county.

(c) For purposes of this chapter, ''local public defender investigator'' means a city or county officer or employee who meets all of the following criteria:

(1) He or she is or, on or after January 1, 2002, was employed in the office of the public defender, the alternate public defender, or any other similar office title.

(2) His or her job classification is or, on or after January 1, 2002, was inspector, investigator, detective, or any other similar classification or title.

(3) His or her principal duties are or, on or after January 1, 2002, were to investigate crime and criminal statutes.

(4) His or her effective date of retirement is on or after the date Section 31470.14 becomes applicable in the county.

SEC. 10. Section 31469.3 of the Government Code is amended to read:

31469.3. ''Safety member'' means any person who is any of the following:

(a) A member of a pension system established pursuant to either Chapter 4 or Chapter 5, who elects by written notice filed with the board, to become a safety member.

(b) Any person employed by a county, subject to Section 31676.1 or 31695.1 or by a district or court organized or existing within such a county, whose principal duties consist of active law enforcement or active fire suppression as described in Section 31470.2 and 31470.4, or active lifeguard service as limited by Section 31470.6 or juvenile hall group counseling and group supervision if adopted by the board of supervisors as provided in Section 31469.4.

(c) Any person described in Section 31469.2 in any county in which Section 31470.14 has become operative.

SEC. 11. Section 31470.2 of the Government Code is amended to read:

31470.2. (a) All sheriffs, undersheriffs, chief deputies sheriff, jailers, turnkeys, deputies sheriff, bailiffs, constables, deputies constable, motorcycle officers, aircraft pilots, heads and assistant heads of all divisions of the office of the sheriff, detectives and investigators in the office of the district attorney, marshals, court service officers only in a county of the third class, as defined in Sections 28020 and 28024, and all regularly appointed deputy marshals are eligible.

(b) In a county of the eighth class, as defined in Sections 28020 and 28029, both as amended by Chapter 1204 of the Statutes of 1971, all peace officers in the Park Ranger class series in the Department of Regional Parks, Recreation, and Open Space are eligible. This subdivision shall not be operative until such time as the county board of supervisors shall, by resolution adopted by a majority vote, make this subdivision applicable in the county.

(c) Local prosecutors, local public defenders, and local public defender investigators are eligible if the county board of supervisors adopts a resolution by a majority vote making this subdivision and Section 31470.14 applicable in the county.

SEC. 12. Section 31470.14 is added to the Government Code, to read:

31470.14. (a) Local prosecutors, local public defenders, and local public defender investigators are eligible.

(b) Except as provided in subdivision (c) and notwithstanding Sections 31639.7 and 31639.75, past service as a general member shall be converted to safety service if the past service was rendered in a position that has subsequently been reclassified as a safety position pursuant to this section. For local prosecutors, as described in paragraph (2) of subdivision (a) of Section 31469.2, service in the office of a district attorney and a local child support agency shall be considered service for the district attorney for purposes of this section.

(c) Notwithstanding any other provision of this chapter, within 90 days after this section becomes operative in the county, or on the first day of the calendar month following his or her entrance into service, whichever is later, a local prosecutor, local public defender, or local public defender investigator may file a written election not to become a local safety member pursuant to this section.

(d) Notwithstanding any other provision of this chapter, local prosecutors, local public defenders, and local public defender investigators shall be subject to the benefit formula contained in Section 31664 or 31664.2, or any other benefit formula applicable to safety members that does not provide benefits greater than those benefits provided under Section 31664.2, as designated in the resolution described in subdivision (e). A local prosecutor, local public defender, or local public defender investigator shall not be deemed to be a county peace officer, as defined in Section 31469.1, for any purpose under this chapter.

(e) This section shall not be operative in a county unless and until the board of supervisors, by resolution adopted by majority vote, makes this section operative in the county. A resolution to make this section operative in the county shall include all local prosecutors, local public defenders, and local public defender investigators described in Section 31469.2.

(f) A provision in a memorandum of understanding that an employer is not obligated to meet and confer regarding wages, hours, or conditions of employment during the term of the memorandum shall not be construed to preclude meetings regarding the provisions of this section between an employer and local prosecutors, local public defenders, and local public defender investigators prior to the expiration of the term of the memorandum of understanding.

(g) This section does not apply to any person described in Section 31469.2 who dies prior to the date this section becomes applicable in the county.

SEC. 12.5. Section 31470.14 is added to the Government Code, to read:

31470.14. (a) Local prosecutors, local public defenders, and local public defender investigators are eligible.

(b) Except as provided in subdivision (c) and notwithstanding Sections 31639.7 and 31639.75, past service as a general member shall be converted to safety service if the past service was rendered in a position that has subsequently been reclassified as a safety position pursuant to this section. For local prosecutors, as described in paragraph (2) of subdivision (a) of Section 31469.2, service in the office of a district attorney and a local child support agency shall be considered service for the district attorney for purposes of this section.

(c) Notwithstanding any other provision of this chapter, within 90 days after this section becomes operative in the county, or on the first day of the calendar month following his or her entrance into service, whichever is later, a local prosecutor, local public defender, or local public defender investigator may file a written election not to become a local safety member pursuant to this section.

(d) Notwithstanding Section 31485.9 or any other provision of this chapter, local prosecutors, local public defenders, and local public defender investigators shall be subject to the benefit formula contained in Section 31664 or 31664.2, or any other benefit formula applicable to safety members that does not provide benefits greater than those benefits provided under Section 31664.2, as designated in the resolution described in subdivision (e). A local prosecutor, local public defender, or local public defender investigator shall not be deemed to be a county peace officer, as defined in Section 31469.1, for any purpose under this chapter.

(e) This section shall not be operative in a county unless and until the board of supervisors, by resolution adopted by majority vote, makes this section operative in the county. A resolution to make this section operative in the county shall include all local prosecutors, local public defenders, and local public defender investigators described in Section 31469.2.

(f) A provision in a memorandum of understanding that an employer is not obligated to meet and confer regarding wages, hours, or conditions of employment during the term of the memorandum shall not be construed to preclude meetings regarding the provisions of this section between an employer and local prosecutors, local public defenders, and local public defender investigators prior to the expiration of the term of the memorandum of understanding.

(g) This section does not apply to any person described in Section 31469.2 who dies prior to the date this section becomes applicable in the county.

SEC. 13. Section 31787.5 of the Government Code is amended to read:

31787.5. (a) A surviving spouse of a member who is killed in the performance of duty or who dies as the result of an accident or an injury caused by external violence or physical force, incurred in the performance of the member's duty, now or hereafter entitled to receive a death allowance under Section 31787, shall be paid an additional amount for each of the member's children during the lifetime of the child, or until the child marries or reaches the age of 18 years, as follows, subject to the limitation in subdivision (b):

(1) For one child, twenty-five percent (25%) of the allowance provided in Section 31787.

(2) For two children, forty percent (40%) of the allowance provided in Section 31787.

(3) For three or more children, fifty percent (50%) of the allowance provided in Section 31787.

(b) If a benefit payable under this section, when added to a benefit payable under Section 31787, exceeds the maximum benefit payable by a tax-qualified pension plan under the Internal Revenue Code (26 U.S.C.A. Sec. 401 et. seq.), the benefit payable under this section shall be reduced to the amount required to meet that benefit limit.

(c) If the surviving spouse does not have legal custody of the member's children, the allowance provided by this section shall be payable to the person to whom custody of the children has been awarded by a court of competent jurisdiction for each child during the lifetime of the child, or until the child marries or reaches the age of 18 years.

(d) The allowance provided by this section shall be payable to the surviving spouses of members whose duties consist of active law enforcement or active fire suppression or any other class or group of members as the retirement board shall fix. The allowance provided by this section is not payable to the surviving spouses of members described in Section 31469.2.

(e) Any child whose eligibility for an allowance pursuant to this section commenced on or after October 1, 1965, shall lose that eligibility effective on the date of his or her adoption.

(f) This section shall become operative in any county, which has adopted the provisions of this chapter but which has not previously adopted the provisions of this section on October 1, 1965. Each surviving spouse of a member or other person having legal custody of a member's child or children who is paid an additional amount for each of the member's children because of the amendments to this section enacted at the 1965 or 1967 Regular Session shall receive those payments as they accrue from and after October 1 of the year during which this section was amended to provide for the payment to him or her of that allowance, but the surviving spouse or other person shall not be given a claim for any increase in those benefits for a time prior to that date.

(g) Notwithstanding any other provisions of this section, the benefits otherwise payable to the children of the member shall be paid to those children through the age of 21 years if the children remain unmarried and are regularly enrolled as full-time students in an accredited school as determined by the board.

SEC. 14. Section 31787.6 of the Government Code is amended to read:

31787.6. A surviving spouse of a safety member who is killed in the performance of duty or who dies as the result of an accident or injury

caused by external violence or physical force, incurred in the performance of his duty, shall be paid the following amount in addition to all other benefits provided by this chapter:

A one-time lump-sum benefit equal to an amount, provided from contributions by the county or district, equal to the annual compensation earnable by the deceased at his monthly rate of compensation at the time of his death.

This section is not applicable to members described in Section 31469.2.

SEC. 15. Section 45311 is added to the Government Code, to read:

45311. (a) It is the intent of the Legislature in enacting this section to recognize a public obligation to all those whose duties as local prosecutors, local public defenders, and local public defender investigators expose them to more than ordinary risks in their contribution to an effective statewide criminal justice system and to ensure that those who serve as local prosecutors, local public defenders, and local public defender investigators and who become incapacitated in the performance of their duties or by age may be replaced by more capable employees and shall receive pension benefits commensurate with those received by local prosecutors, local public defenders, and local public defender investigators in other jurisdictions within the state.

(b) The ordinance shall provide that the officers and employees of the city whose positions meet or, on or after January 1, 2002, met the criteria of a local prosecutor, local public defender, or local public defender investigator, as described in Section 20423.6 or 31469.2, shall be accorded those pension benefits accorded to safety members under the retirement system of the city. Notwithstanding the foregoing, the pension benefits accorded to a local prosecutor, local public defender, or local public defender investigator may not be greater than those benefits provided to local safety members of the Public Employees' Retirement System under Section 21363.1 or safety members of a county retirement system under Section 31664.2.

(c) Except as provided in subdivision (e) and notwithstanding any other provision of this chapter, past service shall be converted to safety service, if the past service was rendered in a position that has been made subject to safety benefits pursuant to this section. For local prosecutors described in paragraph (2) of subdivision (b) of Section 20423.6, and paragraph (2) of subdivision (a) of Section 31469.2, service in the office of a district attorney and a local child support agency shall be considered service for the district attorney for purposes of this section. Any unfunded liability resulting from this section shall be paid by the employer.

(d) This section shall apply only to a person whose effective date of retirement is on or after the date this section becomes operative in the city.

(e) Notwithstanding any other provision of this chapter, within 90 days after this section becomes operative in the city, or on the first day of the calendar month following his or her entrance into service, whichever is later, any local prosecutor, local public defender, or local public defender investigator may file a written election not to become subject to the pension benefits accorded to safety members under the retirement system of the city.

(f) This section shall not be operative in a city unless and until the city council or board of supervisors, by ordinance adopted by majority vote, makes this section operative in the city. A resolution to make this section operative in the city shall include all local prosecutors, local public defenders, and local public defender investigators as described in Section 20423.6 or 31469.2.

(g) This section does not apply to any local prosecutor, local public defender, or local public defender investigator, as described in Section 20423.6 or 31469.2, who dies prior to the date this section becomes operative in the city.

SEC. 16. Section 53217.6 is added to the Government Code, to read:

53217.6. (a) It is the intent of the Legislature in enacting this section to recognize a public obligation to all those whose duties as local prosecutors, local public defenders, and local public defender investigators expose them to more than ordinary risks in their contribution to an effective statewide criminal justice system and to ensure that those who serve as local prosecutors, local public defenders, and local public defender investigators and who become incapacitated in the performance of their duties or by age may be replaced by more capable employees and shall receive pension benefits commensurate with those received by local prosecutors, local public defenders, and local public defender investigators in other jurisdictions within the state.

(b) Notwithstanding any other provision of law, the pension trust benefits of any officer or employee of any city, including a charter city, county, including a charter county, or city and county whose positions meet or, on or after January 1, 2002, met the criteria of a local prosecutor, local public defender, or local public defender investigator, as described in Section 20423.6 or 31469.2, shall be those pension trust benefits accorded to safety members of the applicable county sheriff's department or the applicable police or fire department of the public agency. Notwithstanding the foregoing, the pension trust benefits accorded to a local prosecutor, local public defender, or local public defender investigator may not be greater than those benefits provided to local safety members of the Public Employees' Retirement System

under Section 21363.1 or safety members of a county retirement system under Section 31664.2.

(c) Except as provided in subdivision (e) and notwithstanding any other provision of this chapter, past service shall be converted to safety service, if the past service was rendered in a position that has been made subject to safety benefits pursuant to this section. For local prosecutors described in paragraph (2) of subdivision (b) of Section 20423.6, and paragraph (2) of subdivision (a) of Section 31469.2, service in the office of a district attorney and a local child support agency shall be considered service for the district attorney for purposes of this section. Any unfunded liability resulting from this section shall be paid by the employer.

(d) This section shall apply only to a person whose effective date of retirement is on or after the date this section becomes operative in the city, including a charter city, county, including a charter county, or city and county.

(e) Notwithstanding any other provision of this chapter, within 90 days after this section becomes operative in the city, including a charter city, county, including a charter county, or city and county, or on the first day of the calendar month following his or her entrance into service, whichever is later, any local prosecutor, local public defender, or local public defender investigator may file a written election not to become subject to the pension benefits accorded to safety members under the retirement system of the city, including a charter city, county, including a charter county, or city and county.

(f) This section shall not be operative in a city, including a charter city, county, including a charter county, or city and county unless and until the city council or board of supervisors, by ordinance or resolution adopted by majority vote, makes this section operative in the city, county, or city and county. A resolution to make this section operative shall include all local prosecutors, local public defenders, and local public defender investigators as described in Section 20423.6 or 31469.2.

(g) This section does not apply to any local prosecutor, local public defender, or local public defender investigator, as described in Section 20423.6 or 31469.2, who dies prior to the date this section becomes operative in the city, county, or city and county.

SEC. 17. The provisions of this act are severable. If any provision of this act or its application is held invalid, that invalidity does not affect other provisions or applications that can be given effect without the invalid provision or application.

SEC. 18. Section 12.5 of this bill shall become operative only if SB 362 is enacted and becomes effective on or before January 1, 2003, and

adds Section 31485.9 to the Government Code, in which case Section 12 of this bill shall not become operative.

SEC. 19. Section 4.5 of this bill incorporates amendments to Section 21151 of the Government Code proposed by both this bill and SB 1984. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2003, (2) each bill amends Section 21151 of the Government Code, and (3) this bill is enacted after SB 1984, in which case Section 4 of this bill shall not become operative.

CHAPTER 1153

An act to amend Section 21151 of, and to add Section 21537.5 to, the Government Code, relating to public employees' retirement.

[Approved by Governor September 30, 2002. Filed with Secretary of State September 30, 2002.]

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

SECTION 1. Section 21151 of the Government Code is amended to read:

21151. (a) Any patrol, state safety, state industrial, state peace officer/firefighter, or local safety member incapacitated for the performance of duty as the result of an industrial disability shall be retired for disability, pursuant to this chapter, regardless of age or amount of service.

(b) This section also applies to local miscellaneous members if the contracting agency employing those members elects to be subject to this section by amendment to its contract.

(c) This section also applies to all of the following:

(1) State miscellaneous members employed by the Department of Justice who perform the duties now performed in positions with the class title of Criminalist (Class Code 8466), or Senior Criminalist (Class Code 8478), or Criminalist Supervisor (Class Code 8477), or Criminalist Manager (Class Code 8467), Latent Print Analyst I (Class Code 8460), Latent Print Analyst II (Class Code 8472), or Latent Print Supervisor (Class Code 8473).

(2) State miscellaneous members employed by the Department of the California Highway Patrol who perform the duties now performed in positions with the class title of Communications Operator I, California Highway Patrol (Class Code 1663), Communications Operator II, California Highway Patrol (Class Code 1664), Communications Supervisor I, California Highway Patrol (Class Code 1662), or

Communications Supervisor II, California Highway Patrol (Class Code 1665).

(3) State miscellaneous members whose disability resulted under the conditions specified in Sections 20046.5 and 20047.

(4) State miscellaneous members in State Bargaining Unit 12 employed by the Department of Transportation, provided a memorandum of understanding has been agreed to by the state employer and the recognized employee organization to make this paragraph applicable to those members.

SEC. 1.5. Section 21151 of the Government Code is amended to read:

21151. (a) Any patrol, state safety, state industrial, state peace officer/firefighter, or local safety member incapacitated for the performance of duty as the result of an industrial disability shall be retired for disability, pursuant to this chapter, regardless of age or amount of service.

(b) This section also applies to local miscellaneous members if the contracting agency employing those members elects to be subject to this section by amendment to its contract.

(c) This section also applies to all of the following:

(1) State miscellaneous members employed by the Department of Justice who perform the duties now performed in positions with the class title of Criminalist (Class Code 8466), or Senior Criminalist (Class Code 8478), or Criminalist Supervisor (Class Code 8477), or Criminalist Manager (Class Code 8467), Latent Print Analyst I (Class Code 8460), Latent Print Analyst II (Class Code 8472), or Latent Print Supervisor (Class Code 8473).

(2) State miscellaneous members employed by the Department of the California Highway Patrol who perform the duties now performed in positions with the class title of Communications Operator I, California Highway Patrol (Class Code 1663), Communications Operator II, California Highway Patrol (Class Code 1664), Communications Supervisor I, California Highway Patrol (Class Code 1662), or Communications Supervisor II, California Highway Patrol (Class Code 1665).

(3) State miscellaneous members whose disability resulted under the conditions specified in Sections 20046.5 and 20047.

(4) State miscellaneous members in State Bargaining Unit 12 employed by the Department of Transportation, if a memorandum of understanding has been agreed to by the state employer and the recognized employee organization making this paragraph applicable to those members.

(d) This section does not apply to local safety members described in Section 20423.6, unless this section has been made applicable to local miscellaneous members pursuant to subdivision (b).

SEC. 2. Section 21537.5 is added to the Government Code, to read:

21537.5. (a) The special death benefit is payable if the deceased was a state miscellaneous member in State Bargaining Unit 12 employed by the Department of Transportation, if his or her death occurred as a result of injury arising out of and in the course of his or her official duties with the department, and if there is a survivor who qualifies under subdivision (b) of Section 21541. The Workers' Compensation Appeals Board, using the same procedures as in workers' compensation hearings, shall in disputed cases determine whether the death of the member occurred as a result of that injury.

(b) The jurisdiction of the Workers' Compensation Appeals Board shall be limited solely to the issue of industrial causation, and this section may not be construed to authorize the Workers' Compensation Appeals Board to award costs against this system pursuant to Section 4600, 5811, or any other provision of the Labor Code.

(c) This section shall not become operative unless and until a memorandum of understanding has been agreed to by the state employer and the recognized employee organization making this section applicable to those members described in subdivision (a).

SEC. 3. Section 1.5 of this bill incorporates amendments to Section 21151 of the Government Code proposed by both this bill and AB 2023. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2003, (2) each bill amends Section 21151 of the Government Code, and (3) this bill is enacted after AB 2023, in which case Section 1 of this bill shall not become operative.

CHAPTER 1154

An act to amend Sections 2796.5 and 21151.7 of, and to add Sections 2773.3, 2773.5, and 2797 to, and to repeal Section 21066.5 of, the Public Resources Code, relating to mining.

[Approved by Governor September 30, 2002. Filed with Secretary of State September 30, 2002.]

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

SECTION 1. Section 2773.3 is added to the Public Resources Code, to read:

2773.3. (a) In addition to other reclamation plan requirements of this chapter and regulations adopted by the board pursuant to this chapter, a lead agency may not approve a reclamation plan for a surface mining operation for gold, silver, copper, or other metallic minerals or financial assurances for the operation, if the operation is located on, or within one mile of, any Native American sacred site and is located in an area of special concern, unless both of the following criteria are met:

(1) The reclamation plan requires that all excavations be backfilled and graded to do both of the following:

(A) Achieve the approximate original contours of the mined lands prior to mining.

(B) Grade all mined materials that are in excess of the materials that can be placed back into excavated areas, including, but not limited to, all overburden, spoil piles, and heap leach piles, over the project site to achieve the approximate original contours of the mined lands prior to mining.

(2) The financial assurances are sufficient in amount to provide for the backfilling and grading required by paragraph (1).

(b) For purposes of this section, the following terms have the following meaning:

(1) ''Native American sacred site'' means a specific area that is identified by a federally recognized Indian Tribe, Rancheria or Mission Band of Indians, or by the Native American Heritage Commission, as sacred by virtue of its established historical or cultural significance to, or ceremonial use by, a Native American group, including, but not limited to, any area containing a prayer circle, shrine, petroglyph, or spirit break, or a path or area linking the circle, shrine, petroglyph, or spirit break with another circle, shrine, petroglyph, or spirit break.

(2) ''Area of special concern'' means any area in the California desert that is designated as Class C or Class L lands or as an Area of Critical Environmental Concern under the California Desert Conservation Area Plan of 1980, as amended, by the United States Department of the Interior, Bureau of Land Management, pursuant to Section 1781 of Title 43 of the United States Code.

SEC. 2. Section 2773.5 is added to the Public Resources Code, to read:

2773.5. Section 2773.3 does not apply to either of the following:

(a) Any surface mining operation in existence on January 1, 2003, for which the lead agency has issued final approval of a reclamation plan and the financial assurances prior to September 1, 2002.

(b) Any amended reclamation plan or financial assurances that are necessary for the continued operation or expansion of a surface mining operation in existence on January 1, 2003, that otherwise satisfies the requirements of subdivision (a).

SEC. 3. Section 2796.5 of the Public Resources Code is amended to read:

2796.5. (a) The director, with the consultation of appropriate state and local agencies, may remediate or complete reclamation of abandoned mined lands that meet all of the following requirements:

(1) No operator having both the responsibility and the financial ability to remediate or reclaim the mined lands can be found within the state.

(2) No reclamation plan is in effect for the mined lands.

(3) No financial assurances exist for the mined lands.

(4) The mined lands are abandoned, as that term is used in paragraph (6) of subdivision (h) of Section 2770.

(b) In deciding whether to act pursuant to subdivision (a), the director shall consider whether the action would accomplish one of the following:

(1) The protection of the public health and safety or the environment from the adverse effects of past surface mining operations.

(2) The protection of property that is in danger as a result of past surface mining operations.

(3) The restoration of land and water resources previously degraded by the adverse effects of surface mining operations.

(c) The director may also consider the potential liability to the state in deciding whether to act under this section. Neither the director, the department, nor the state, or its appointees, employees, or agents, in conducting remediation or reclamation under this section, shall be liable under applicable state law, and it is the intent of the Legislature that those persons and entities not be liable for those actions under federal laws.

(d) (1) The remediation or reclamation work performed under this section includes, but is not limited to, supervision of remediation or reclamation activities that, in the director's judgment, is required by the magnitude of the endeavor or the urgency for prompt action needed to protect the public health and safety or the environment. The action may be taken in default of, or in addition to, remedial work by any other person or governmental agency, and regardless of whether injunctive relief is being sought.

(2) The director may authorize the work to be performed through department staff, with the cooperation of any other governmental agency, or through contracts, and may use rented tools or equipment, either with or without operators furnished.

(3) In cases of emergency where quick action is necessary, notwithstanding any other provision of law, the director may enter into oral contracts for the work, and the contracts, whether written or oral, may include provisions for the rental of tools or equipment and in addition the furnishing of labor and materials necessary to accomplish

the work. These emergency contracts are exempt from approval by the Department of General Services pursuant to Section 10295 of the Public Contract Code.

(4) The director shall be permitted reasonable access to the abandoned mined lands as necessary to perform any remediation or reclamation work. The access shall be obtained with the consent of the owner or possessor of the property or, if the consent is withheld or otherwise unobtainable, with a warrant duly issued pursuant to the procedure described 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, the director may enter the property without consent or the issuance of a warrant.

(e) For any remediation or reclamation work accomplished, or other necessary remedial action taken by any governmental agency, the operator, landowner, and the person or persons who allowed or caused any pollution or nuisance are liable to that governmental agency to the extent of the reasonable costs actually incurred in remediating, reclaiming, or taking other remedial action. The amount of the costs is recoverable in a civil action by, and paid to, the governmental agency and the director to the extent of the director's contribution to the costs of the remediation, reclamation, cleanup, and abatement or other corrective action.

(f) (1) The amount of the costs constitutes a lien on the affected property upon service of a copy of the notice of lien on the owner and upon the recordation of a notice of lien, which identifies the property on which the remediation or reclamation was accomplished, the amount of the lien, and the owner of record of the property, in the office of the county recorder of the county in which the property is located. Upon recordation, the lien has the same force, effect, and priority as a judgment lien, except that it attaches only to the property posted and described in the lien. The lien shall continue for 10 years from the time of the recording of the notice of the lien unless sooner released or otherwise discharged, and may be renewed.

(2) Not later than 45 days after receiving a notice of lien, the owner may petition the court for an order releasing the property from the lien or reducing the amount of the lien. In this court action, the governmental agency that incurred the costs shall establish that the costs were reasonable and necessary. The lien may be foreclosed by an action brought by the director, for a money judgment. Money recovered by a judgment in favor of the director shall be used for the purposes of this chapter.

(g) If the operation has been idle for more than one year without obtaining an approved interim management plan, an application for the review of an interim management plan filed for the purpose of

preventing the director from undertaking remediation or reclamation of abandoned mined lands under this section shall be voidable by the lead agency or the board upon notice and hearing by the lead agency or the board. In the event of conflicting determinations, the decision of the board shall prevail.

(h) ''Remediate,'' for the purposes of this section, means to improve conditions so that threat to or damage to public health and safety or the environment are lessened or ameliorated, including the cleanup and abatement of pollution or nuisance or threatened pollution or nuisance.

(i) ''Threaten,'' for the purposes of this section, means a condition creating a probability of harm, when the probability and potential extent of harm make it reasonably necessary to take action to prevent, reduce, or mitigate damages to persons, property, or the environment.

(j) This section shall apply to abandoned mined lands on which the mining operations were conducted after January 1, 1976.

(k) The director may act under this section only upon the appropriation of funds by the Legislature for the purposes of carrying out this section.

(*l*) Nothing in this section limits the authority of any state agency under any other law or regulation to enforce or administer any cleanup or abatement activity.

(m) This section shall remain in effect only until January 1, 2007, and as of that date is repealed, unless a later enacted statute that is enacted before January 1, 2007, deletes or extends that date.

SEC. 4. Section 2797 is added to the Public Resources Code, to read:

2797. (a) Not later than January 1 of each year, the director shall report to the Legislature on any abandoned mine remediation projects that are proposed for the following fiscal year.

(b) The report required to be prepared pursuant to subdivision (a) shall include information on all of the following:

(1) The source of funding and scope of work to be performed.

(2) Any other governmental agencies having jurisdiction over any proposed project, if any, and the role of any of those affected governmental agencies with respect to the proposed project.

(3) Any impacts on the local community or any other stakeholders that may result from the proposed project.

(4) Any potential legal consequences that may result from the commencement of remediation work.

(c) The report required to be prepared pursuant to this section shall be made available on the department's Internet Web site.

SEC. 5. Section 21066.5 of the Public Resources Code, as proposed to be added by Senate Bill 1828 of the 2001–02 Regular Session, is repealed.

SEC. 5.5. Section 21151.7 of the Public Resources Code is amended to read:

21151.7. Notwithstanding any other provision of law, a lead agency shall prepare or cause to be prepared by contract, and certify the completion of, an environmental impact report for any open-pit mining operation that is subject to the permit requirements or reclamation plan requirements of the Surface Mining and Reclamation Act of 1975 (Chapter 9 (commencing with Section 2710) of Division 2) and utilizes a cyanide heap-leaching process for the purpose of producing gold or other metallic minerals.

SEC. 6. This act is not intended to interfere with the ability of the federal government to designate particular land uses applicable to federal government owned lands or to conflict with the ability of the federal government to permit or allow particular land use activities to occur on federal lands. This act is intended to be a state regulatory framework consistent with California Coastal Comm'n v. Granite Rock (1987) 480 U.S. 572.

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.

SEC. 8. This act shall become operative only if Senate Bill 1828 of the 2001–02 Regular Session is enacted and becomes effective on or before January 1, 2003.

CHAPTER 1155

An act to add Chapter 1.76 (commencing with Section 5097.995) to Division 5 of the Public Resources Code, relating to historical resources.

[Approved by Governor September 30, 2002. Filed with Secretary of State September 30, 2002.]

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

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

(a) Native American burial sites and Native American cultural resources have always been, and will continue to be, considered sacred to California Native Americans.

(b) California Native American sacred cultural resources and burial sites have been continuously looted and destroyed by grave robbers and people wanting to sell sacred and cultural artifacts.

(c) California Native American sacred sites are nonrenewable and need additional protection.

(d) California Native American tribes have demonstrated ancestral affiliation to Native American burial sites and historical and cultural resources.

(e) The United States Government and many western states, including California, have realized the need for protection of Native American burial sites and cultural resources and have enacted laws to reflect this awareness with more stringent legal enforcement and penalties for desecration of Native American sacred sites.

(f) Legislation is needed to provide the additional legal protection for Native American burial and cultural sites, art, and other cultural artifacts found at those sites.

(g) Legislation is needed to provide additional legal protection for Native American historical and cultural sites, art, and other cultural artifacts found at those sites, if that protection for Native American cultural resources found on private lands is consistent with constitutionally protected property rights of the persons who own the land on which they are found.

(h) Consistent with Sections 5020.7 and 5097.94 of the Public Resources Code, in order to encourage collaborative relationships for the protection of Native American cultural resources between Native Americans and landowners, funding and other state assistance should be encouraged for support of voluntary agreements to conserve, maintain, and provide physical access for Native Americans to these cultural resources.

SEC. 2. Chapter 1.76 (commencing with Section 5097.995) is added to Division 5 of the Public Resources Code, to read:

CHAPTER 1.76. NATIVE AMERICAN HISTORIC RESOURCE PROTECTION ACT

5097.995. (a) (1) Any person who unlawfully and maliciously excavates upon, removes, destroys, injures, or defaces a Native American historic, cultural, or sacred site, that is listed or may be eligible for listing in the California Register of Historic Resources pursuant to Section 5024.1, including any historic or prehistoric ruins, any burial ground, any archaeological or historic site, any inscriptions made by Native Americans at such a site, any archaeological or historic Native American rock art, or any archaeological or historic feature of a Native American historic, cultural, or sacred site is guilty of a misdemeanor if

the act was committed with specific intent to vandalize, deface, destroy, steal, convert, possess, collect, or sell a Native American historic, cultural, or sacred artifact, art object, inscription, or feature, or site and the act was committed as follows:

(A) On public land.

(B) On private land, by a person, other than the landowner, as described in subdivision (b).

(2) A violation of this section is punishable by imprisonment in the county jail for up to one year, by a fine not to exceed ten thousand dollars ($10,000), or by both that fine and imprisonment.

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

(1) Any act taken in accordance with, or pursuant to, an agreement entered into pursuant to subdivision (*l*) of Section 5097.94.

(2) Any action taken pursuant to Section 5097.98.

(3) Any act taken in accordance with the California Environmental Quality Act (Division 13 (commencing with Section 21000)).

(4) Any act taken in accordance with the National Environmental Policy Act of 1969 (42 U.S.C. Sec. 4321 et seq.).

(5) Any act authorized under the Z'berg-Nejedly Forest Practice Act of 1973 (Chapter 8 (commencing with Section 4511) of Part 2 of Division 4).

(6) Any action taken with respect to a conservation easement in accordance with Chapter 4 (commencing with Section 815) of Division 2 of the Civil Code, or any similar nonperpetual enforceable restriction that has as its purpose the conservation, maintenance, or provision of physical access of Native Americans to one or more Native American historic, cultural, or sacred sites, or pursuant to a contractual agreement for that purpose to which most likely descendents of historic Native American inhabitants are signatories.

(7) Any otherwise lawful act undertaken by the owner, or an employee or authorized agent of the owner acting at the direction of the owner, of land on which artifacts, sites, or other Native American resources covered by this section are found, including, but not limited to, farming, ranching, forestry, improvements, investigations into the characteristics of the property conducted in a manner that minimizes adverse impacts unnecessary to that purpose, and the sale, lease, exchange, or financing of real property.

(8) Research conducted under the auspices of an accredited postsecondary educational institution or other legitimate research institution on public land in accordance with applicable permitting requirements or on private land in accordance with otherwise applicable law.

5097.996. (a) Each person who violates subdivision (a) of Section 5097.995 is subject to a civil penalty not to exceed fifty thousand dollars ($50,000) per violation.

(b) A civil penalty may be imposed for each separate violation of subdivision (a) in addition to any other civil penalty imposed for a separate violation of any other provision of law.

(c) In determining the amount of any civil penalty imposed pursuant to this section, the court shall take into account the extent of the damage to the resource. In making the determination of damage, the court may consider the commercial or archaeological value of the resource involved and the cost to restore and repair the resource.

(d) A civil action may be brought pursuant to this section by the district attorney, the city attorney, or the Attorney General, or by the Attorney General upon a complaint by the Native American Heritage Commission.

(e) (1) All moneys collected from civil penalties imposed pursuant to this section as a result of an enforcement action brought by a city or county shall be distributed to the city or county treasurer of the city or county that brought the action. These moneys shall be first utilized to repair or restore the damaged site, and the remaining moneys shall be available to that city or county to offset costs incurred in enforcing this chapter.

(2) All moneys collected from civil penalties imposed pursuant to this section as a result of an enforcement action brought by the Attorney General shall be first distributed to, and utilized by, the Native American Heritage Commission to repair or restore the damaged site, and the remaining moneys shall be available to the Attorney General to offset costs incurred in enforcing this chapter.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

CHAPTER 1156

An act to amend Section 3309.5 of the Government Code, relating to public safety officers.

[Approved by Governor September 30, 2002. Filed with
Secretary of State September 30, 2002.]

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

SECTION 1. Section 3309.5 of the Government Code is amended to read:

3309.5. (a) It shall be unlawful for any public safety department to deny or refuse to any public safety officer the rights and protections guaranteed to him or her by this chapter.

(b) The superior court shall have initial jurisdiction over any proceeding brought by any public safety officer against any public safety department for alleged violations of this chapter.

(c) (1) In any case where the superior court finds that a public safety department has violated any of the provisions of this chapter, the court shall render appropriate injunctive or other extraordinary relief to remedy the violation and to prevent future violations of a like or similar nature, including, but not limited to, the granting of a temporary restraining order, preliminary, or permanent injunction prohibiting the public safety department from taking any punitive action against the public safety officer.

(2) If the court finds that a bad faith or frivolous action or a filing for an improper purpose has been brought pursuant to this chapter, the court may order sanctions against the party filing the action, the parties attorney, or both pursuant to Sections 128.6 and 128.7 of the Code of Civil Procedure. Those sanctions may include, but not be limited to, reasonable expenses, including attorney's fees, incurred by a public safety department, as the court deems appropriate. Nothing in this paragraph is intended to subject actions or filings under this section to rules or standards that are different from those applicable to other civil actions or filings subject to Section 128.6 or 128.7 of the Code of Civil Procedure.

(d) In addition to the extraordinary relief afforded by this chapter, upon a finding by a superior court that a public safety department, its employees, agents, or assigns, with respect to acts taken within the scope of employment, maliciously violated any provision of this chapter with the intent to injure the public safety officer, the public safety department shall, for each and every violation, be liable for a civil penalty not to exceed twenty-five thousand dollars ($25,000) to be awarded to the public safety officer whose right or protection was denied and for reasonable attorney's fees as may be determined by the court. If the court so finds, and there is sufficient evidence to establish actual damages suffered by the officer whose right or protection was denied, the public safety department shall also be liable for the amount of the actual

damages. Notwithstanding these provisions, a public safety department may not be required to indemnify a contractor for the contractor's liability pursuant to this subdivision if there is, within the contract between the public safety department and the contractor, a ''hold harmless'' or similar provision that protects the public safety department from liability for the actions of the contractor. An individual shall not be liable for any act for which a public safety department is liable under this section.

CHAPTER 1157

An act to repeal and add Section 853 of, and to add Sections 854 and 855 to, the Business and Professions Code, relating to healing arts.

[Approved by Governor September 30, 2002. Filed with Secretary of State September 30, 2002.]

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

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

The 2000 United States Census determined the population of California to be over 35 million people with approximately 11 million being Latino.

From July 1990 to July 1999, California's population increased by approximately 4 million people. Approximately 61 percent of this growth can be attributed to the growth in the Latino population. The Latino population has increased at an average rate of 275,000 persons per year from 1990 to 1999. The Latino population is estimated to have grown in virtually all counties over this period.

The United States General Accounting Office reports that the United States Community Health Centers patients are comprised of 65 percent ethnic and racial minorities.

Title VI of the Civil Rights Act of 1964 requires any federally funded health facility to ensure persons with limited English proficiency may meaningfully access health care services. Persons with limited English proficiency are often excluded from programs, experience delays or denials of services, or receive care and services based on inaccurate or incomplete information.

The Health Resources and Services Administration reports the number of physicians in California grew 17 percent between 1989 and 1998.

The Health Resources and Services Administration found in 1998 that only 4 percent of active patient care physicians were Latino.

The Association of American Medical Colleges in 1998 found only 6.8 percent of all graduates from United States medical schools were of an ethnic or racial minority group.

In 1999 only 11 percent of dentists in California were a member of a racial or ethnic minority group with 5 percent being classified as Asian or Pacific Islanders.

In 1996 only 4 percent of dentists in California were Latino.

According to the Institute of Medicine report requested by the United States Congress, research evidence suggests that provider-patient communication is directly linked to patient satisfaction, adherence, and subsequently health outcomes. Thus, when sociocultural differences between the patient and the provider are not appreciated, explored, understood, or communicated in the medical encounter, the result is patient dissatisfaction, poor adherence, poorer health outcomes, and racial and ethnic disparities in health care.

A Commonwealth Fund of New York study found that: (1) one-third of Latinos said they had problems communicating with their doctors with barriers to this poor communication including language, cultural traditions, and sensitivity; (2) communication is essential to quality health care; and (3) inadequate communication can lead to the perception of inhumane health care service delivery.

The Summit on Immigration Needs & Contributions of the Bridging Borders in the Silicon Valley Project found that approximately 50 percent of participants reported that having a provider that speaks his or her language will improve the quality of health care services they receive.

Only two states in the country have reported cultural competency standards for care.

No states in the country have reported foreign language competencies for physicians or dentists.

According to the Dallas Morning News, many immigrants travel to Mexico to receive health care due to the cultural and language barriers they encounter in the United States health care system. According to the San Jose Mercury News, 65 percent of the membership of the largest medical association in California reported that if they were required to pay for medical interpreters, they would stop seeing patients that required interpretation services.

According to the Journal of the American Medical Association, in 1999, one medical school had a separate course covering cultural diversity, 109 medical schools included cultural diversity content as part of a required course or clerkship, and 84 medical schools included information on cultural beliefs or practices related to death or dying in a required course or clerkship.

SEC. 2. Section 853 of the Business and Professions Code is repealed.

SEC. 3. Section 853 is added to the Business and Professions Code, to read:

853. (a) The Licensed Physicians and Dentists from Mexico Pilot Program is hereby created. This program shall allow up to 30 licensed physicians specializing in family practice, internal medicine, pediatrics, and obstetrics and gynecology, and up to 30 licensed dentists from Mexico to practice medicine or dentistry in California for a period not to exceed three years. The program shall also maintain an alternate list of program participants.

(b) The Medical Board of California shall issue three-year nonrenewable licenses to practice medicine to licensed Mexican physicians and the Dental Board of California shall issue three-year nonrenewable permits to practice dentistry to licensed Mexican dentists.

(c) Physicians from Mexico eligible to participate in this program shall comply with the following:

(1) Be licensed, certified or recertified, and in good standing in their medical specialty in Mexico. This certification or recertification shall be performed, as appropriate, by the Consejo Mexicano de Ginocologia y Obstetricia, A.C., the Consejo Mexicano de Certificacion en Medicina Familiar, A.C., the Consejo Mexicano de Medicina Interna, A.C., or the Consejo Mexicano de Certificacion en Pediatria, A.C.

(2) Prior to leaving Mexico, each physician shall have completed the following requirements:

(A) Passed the board review course with a score equivalent to that registered by United States applicants when passing a board review course for the United States certification examination in each of his or her specialty areas and passed an interview examination developed by the National Autonomous University of Mexico (UNAM) for each specialty area. Family practitioners who shall include obstetrics and gynecology in their practice, shall also be required to have appropriately documented, as specified by United States standards, 50 live births. Mexican obstetricians and gynecologists shall be fellows in good standing of the American College of Obstetricians and Gynecologists.

(B) (i) Satisfactorily completed a six-month orientation program that addressed medical protocol, community clinic history and operations, medical administration, hospital operations and protocol, medical ethics, the California medical delivery system, health maintenance organizations and managed care practices, and pharmacology differences. This orientation program shall be approved by the Medical Board of California to ensure that it contains the requisite subject matter and meets appropriate California law and medical standards where applicable.

(ii) Additionally, Mexican physicians participating in the program shall be required to be enrolled in adult English as a Second Language (ESL) classes that focus on both verbal and written subject matter. Each physician participating in the program shall have transcripts sent to the Medical Board of California from the appropriate Mexican university showing enrollment and satisfactory completion of these classes.

(C) Representatives from the National Autonomous University of Mexico (UNAM) in Mexico and a medical school in good standing or a facility conducting an approved medical residency training program in California shall confer to develop a mutually agreed upon distant learning program for the six-month orientation program required pursuant to subparagraph (B).

(3) Upon satisfactory completion of the requirements in paragraphs (1) and (2), and after having received their three-year nonrenewable medical license, the Mexican physicians shall be required to obtain continuing education pursuant to Section 2190 of the Business and Professions Code. Each physician shall obtain an average of 25 continuing education units per year for a total of 75 units for a full three years of program participation.

(4) Upon satisfactory completion of the requirements in paragraphs (1) and (2), the applicant shall receive a three-year nonrenewable license to work in nonprofit community health centers and shall also be required to participate in a six-month externship at his or her place of employment. This externship shall be undertaken after the participant has received a license and is able to practice medicine. The externship shall ensure that the participant is complying with the established standards for quality assurance of nonprofit community health centers and medical practices. The externship shall be affiliated with a medical school in good standing in California. Complaints against program participants shall follow the same procedures contained in the Medical Practice Act (Chapter 5 (commencing with Section 2000)).

(5) After arriving in California, Mexican physicians participating in the program shall be required to be enrolled in adult English as a Second Language (ESL) classes at institutions approved by the Bureau of Private Post Secondary and Vocational Education or accredited by the Western Association of Schools and Colleges. These classes shall focus on verbal and written subject matter to assist a physician in obtaining a level of proficiency in English that is commensurate with the level of English spoken at community clinics where he or she will practice. The community clinic employing a physician shall submit documentation confirming approval of an ESL program to the Medical Board of California for verification. Transcripts of satisfactory completion of the ESL classes shall be submitted to the Medical Board of California as proof of compliance with this provision.

(6) (A) Nonprofit community health centers employing Mexican physicians in the program shall be required to have medical quality assurance protocols and either be accredited by the Joint Commission on Accreditation of Health Care Organizations or have protocols similar to those required by the Joint Commission on Accreditation of Health Care Organizations. These protocols shall be submitted to the Medical Board of California prior to the hiring of Mexican physicians.

(B) In addition, after the program participant successfully completes the six-month externship program, a free standing health care organization that has authority to provide medical quality certification, including, but not limited to, health plans, hospitals, and the Integrated Physician Association, shall be responsible for ensuring and overseeing the compliance of nonprofit community health centers medical quality assurance protocols, conducting site visits when necessary, and developing any additional protocols, surveys, or assessment tools to ensure that quality of care standards through quality assurance protocols are being appropriately followed by physicians participating in the program.

(7) Participating hospitals shall have the authority to establish criteria necessary to allow individuals participating in this three-year pilot program to be granted hospital privileges in their facilities.

(8) The Medical Board of California shall provide oversight review of both the implementation of this program and the evaluation required pursuant to subdivision (j). The Board shall consult with the medical schools applying for funding to implement and evaluate this program, executive and medical directors of nonprofit community health centers wanting to employ program participants, and hospital administrators who will have these participants practicing in their hospital, as it conducts its oversight responsibilities of this program and evaluation. Any funding necessary for the implementation of this program, including the evaluation and oversight functions, shall be secured from nonprofit philanthropic entities. Implementation of this program may not proceed unless appropriate funding is secured from nonprofit philanthropic entities. The Medical Board of California shall report to the Legislature every January during which the program is operational regarding the status of the program and the ability of the program to secure the funding necessary to carry out its required provisions. Notwithstanding Section 11005 of the Government Code, the board may accept funds from nonprofit philanthropic entities. The board shall, upon appropriation in the annual Budget Act, expend funds received from nonprofit philanthropic entities for this program.

(d) (1) Dentists from Mexico eligible to participate in this program shall comply with the following:

(A) Be graduates from the National Autonomous University of Mexico School of Faculty Dentistry (Facultad de Odontologia).

(B) Meet all criteria required for licensure in Mexico that is required and being applied by the National Autonomous University of Mexico School of Faculty Dentistry (Facultad de Odontologia), including, but not limited to:

(i) A minimum grade point average.

(ii) A specified English language comprehension and conversational level.

(iii) Passage of a general examination.

(iv) Passage of an oral interview.

(C) Enroll and complete an orientation program that focuses on the following:

(i) Practical issues in pharmacology which shall be taught by an instructor who is affiliated with a California dental school approved by the Dental Board of California.

(ii) Practical issues and diagnosis in oral pathology which shall be taught by an instructor who is affiliated with a California dental school approved by the Dental Board of California.

(iii) Clinical applications which shall be taught by an instructor who is affiliated with a California dental school approved by the Dental Board of California.

(iii) Biomedical sciences which shall be taught by an instructor who is affiliated with a California dental school approved by the Dental Board of California.

(iv) Clinical history management which shall be taught by an instructor who is affiliated with a California dental school approved by the Dental Board of California.

(v) Special patient care which shall be taught by an instructor who is affiliated with a California dental school approved by the Dental Board of California.

(vi) Sedation techniques which shall be taught by an instructor who is affiliated with a California dental school approved by the Dental Board of California.

(vii) Infection control guidelines which shall be taught by an instructor who is affiliated with a California dental school approved by the Dental Board of California.

(viii) Introduction to health care systems in California.

(ix) Introduction to community clinic operations.

(2) Upon satisfactory completion to a competency level of the requirements in paragraph (1), dentists participating in the program shall be eligible to obtain employment in a nonprofit community health center pursuant to subdivision (f) within the structure of an extramural dental program for a period not to exceed three years.

(3) Dentists participating in the program shall be required to complete the necessary continuing education units required by the Dental Practice Act (Chapter 4 (commencing with Section 1600)).

(4) The program shall accept 30 participating dentists. The program shall also maintain an alternate list of program applicants. If an active program participant leaves the program for any reason, a participating dentist from the alternate list shall be chosen to fill the vacancy. Only active program participants shall be required to complete the orientation program specified in subparagraph (C) of paragraph (1) of this subdivision.

(5) (A) Additionally, an extramural dental facility may be identified, qualified, and approved by the board as an adjunct to, and an extension of, the clinical and laboratory departments of an approved dental school.

(B) As used in this subdivision, ''extramural dental facility'' includes, but is not limited to, any clinical facility linked to an approved dental school for the purposes of monitoring or overseeing the work of a dentist licensed in Mexico participating in this program and that is employed by an approved dental school for instruction in dentistry which exists outside or beyond the walls, boundaries, or precincts of the primary campus of the approved dental school, and in which dental services are rendered. These facilities shall include nonprofit community heath centers.

(C) Dental services provided to the public in these facilities shall constitute a part of the dental education program.

(D) Approved dental schools shall register extramural dental facilities with the board. This registration shall be accompanied by information supplied by the dental school pertaining to faculty supervision, scope of treatment to be rendered, arrangements for postoperative care, the name and location of the facility, the date operations shall commence at the facility, and a description of the equipment and facilities available. This information shall be supplemented with a copy of the agreement between the approved dental school and the affiliated institution establishing the contractual relationship. Any change in the information initially provided to the board shall be communicated to the board.

(6) The program shall also include issues dealing with program operations, and shall be developed in consultation by representatives of community clinics, approved dental schools, and the National Autonomous University of Mexico School of Faculty Dentistry (Facultad de Odontologia).

(7) The Dental Board of California shall provide oversight review of the implementation of this program and the evaluation required pursuant to subdivision (j). The Dental Board shall consult with dental schools in California that have applied for funding to implement and evaluate this

program and executive and dental directors of nonprofit community health centers wanting to employ program participants, as it conducts its oversight responsibilities of this program and evaluation. Implementation of this program may not proceed unless appropriate funding is secured from nonprofit philanthropic entities. The Dental Board of California shall report to the Legislature every January during which the program is operational regarding the status of the program and the ability of the program to secure the funding necessary to carry out its required provisions. Notwithstanding Section 11005 of the Government Code, the board may accept funds from nonprofit philanthropic entities.

(e) Nonprofit community health centers that employ participants shall be responsible for ensuring that participants are enrolled in local English-language instruction programs and that the participants attain English-language fluency at a level that would allow the participants to serve the English-speaking patient population when necessary and have the literacy level to communicate with appropriate hospital staff when necessary.

(f) Physicians and dentists from Mexico having met the applicable requirements set forth in subdivisions (c) and (d) shall be placed in a pool of candidates who are eligible to be recruited for employment by nonprofit community health centers in California, including, but not limited to, those located in the Counties of Ventura, Los Angeles, San Bernardino, Imperial, Monterey, San Benito, Sacramento, San Joaquin, Santa Cruz, Yuba, Orange, Colusa, Glenn, Sutter, Kern, Tulare, Fresno, Stanislaus, San Luis Obispo, and San Diego. The Medical Board of California shall ensure that all Mexican physicians participating in this program have satisfactorily met the requirements set forth in subdivision (c) prior to placement at a nonprofit community health center.

(g) Nonprofit community health centers in the counties listed in subdivision (f) shall apply to the Medical Board of California and the Dental Board of California to hire eligible applicants who shall then be required to complete a six-month externship that includes working in the nonprofit community health center and a corresponding hospital. Once enrolled in this externship, and upon payment of the required fees, the Medical Board of California shall issue a three-year nonrenewable license to practice medicine and the Dental Board of California shall issue a three-year nonrenewable dental special permit to practice dentistry. For purposes of this program, the fee for a three-year nonrenewable license to practice medicine shall be nine hundred dollars ($900) and the fee for a three-year nonrenewable dental permit shall be five hundred forty-eight dollars ($548). A licensee or permitholder shall practice only in the nonprofit community health center that offered him or her employment and the corresponding hospital. This three-year nonrenewable license or permit shall be deemed to be a license or permit

in good standing pursuant to the provisions of this chapter for the purpose of participation and reimbursement in all federal, state, and local health programs, including managed care organizations and health maintenance organizations.

(h) The three-year nonrenewable license or permit shall terminate upon notice by certified mail, return receipt requested, to the licensee's or permitholder's address of record, if, in the Medical Board of California or Dental Board of California's sole discretion, it has determined that either:

(1) The license or permit was issued by mistake.

(2) A complaint has been received by either board against the licensee or permitholder that warrants terminating the license or permit pending an investigation and resolution of the complaint.

(i) All applicable employment benefits, salary, and policies provided by nonprofit community health centers to their current employees shall be provided to medical and dental practitioners from Mexico participating in this pilot program. This shall include nonprofit community health centers providing malpractice insurance coverage.

(j) Beginning 12 months after this pilot program has commenced, an evaluation of the program shall be undertaken with funds provided from philanthropic foundations. The evaluation shall be conducted jointly by one medical school and one dental school in California and the National Autonomous University of Mexico in consultation with the Medical Board of California and the Dental Board of California. If the evaluation required pursuant to this section does not begin within 15 months after the pilot project has commenced, the evaluation may be performed by an independent consultant selected by the Director of the Department of Consumer Affairs. This evaluation shall include, but not be limited to, the following issues and concerns:

(1) Quality of care provided by doctors and dentists licensed under this pilot program.

(2) Adaptability of these licensed practitioners to California medical and dental standards.

(3) Impact on working and administrative environment in nonprofit community health centers and impact on interpersonal relations with medical licensed counterparts in health centers.

(4) Response and approval by patients.

(5) Impact on cultural and linguistic services.

(6) Increases in medical encounters provided by participating practitioners to limited English-speaking patient populations and increases in the number of limited English-speaking patients seeking health care services from nonprofit community health centers.

(7) Recommendations on whether the program should be continued, expanded, altered, or terminated.

(8) Progress reports on available data listed shall be provided to the Legislature on achievable time intervals beginning the second year of implementation of this pilot program. An interim final report shall be issued three months before termination of this pilot. A final report shall be submitted to the Legislature at the time of termination of this pilot program on all of the above data. The final report shall reflect and include how other initiatives concerning the development of culturally and linguistically competent medical and dental providers within California and the United States are impacting communities in need of these health care providers.

(k) Costs for administering this pilot program shall be secured from philanthropic entities.

(*l*) Program applicants shall be responsible for working with the governments of Mexico and the United States in order to obtain the necessary three-year visa required for program participation.

SEC. 4. Section 854 is added to the Business and Professions Code, to read:

854. Criteria for issuing three-year nonrenewable medical licenses and dental permits under this article shall not be utilized at any time as the standard for issuing a license to practice medicine or a permit to practice dentistry in California on a permanent basis.

SEC. 5. Section 855 is added to the Business and Professions Code, to read:

855. (a) Up to 70 international medical graduates who have passed their United States medical license examination on the first attempt and who have been working in the medical field in the capacity of a medical assistant, a nurse practitioner, a nurse-midwife, a physician assistant, a dental hygienist, or a quality assurance and peer review specialist for not less than three years, shall be selected to participate in a pilot program. Preference shall be given to international medical graduates who are residents of California, have experience working in communities whose language is other than English and whose culture is not from the dominant society, and have a proven level of literacy in the foreign language of a medically underserved community.

(b) If there are not 70 international medical graduates who meet the criteria of subdivision (a), the remaining openings may be filled by participants who have passed the United States medical license examination on two or more attempts, have been working in the medical field in the capacity of a medical assistant, a nurse practitioner, a nurse-midwife, a physician assistant, a dental hygienist, or a quality assurance and peer review specialist for not less than three years, and who pass an additional test to be determined by the medical facility and the medical school participating in the pilot program. Preference shall be given to international medical graduates who are residents of

California, have experience working in communities whose language is other than English and whose culture is not from the dominant society, and have a proven level of literacy in the foreign language of a medically underserved community.

(c) An international medical graduate shall not be eligible for this program if he or she has not graduated from a school in good standing that is recognized by the Medical Board of California.

(d) Upon selection for the pilot program, participants may submit an application to the International Medical Graduate Liaison of the Medical Board of California's Division of Licensing, with the appropriate fee, to initiate the medical licensing review process, providing the participant time to remediate any deficiency during the three-year international medical graduates pilot program.

(e) All program participants shall be required to have the foreign language fluency and the cultural knowledge necessary to serve the non-English-speaking community at the nonprofit community health center where they practice.

(f) The Medical Board of California shall issue an applicant status letter to participating and qualifying international medical graduates.

(g) International medical graduates shall be required to participate and satisfactorily complete a six-month orientation program that will address medical protocol, community clinic history and operations, medical administration, hospital operations and protocol, medical ethics, the California medical delivery system, health maintenance organizations and managed care practices, and pharmacology differences. International medical graduates who have passed the Educational Commission for Foreign Medical Graduates (ECFMG) language exam shall not be required to be enrolled in English language classes. However, if a participating international medical graduate has not passed the ECFMG language exam, he or she shall be enrolled in English language acquisition classes until he or she obtains a level of English language proficiency equivalent to the ECFMG language exam.

(h) (1) Upon satisfactorily completing the orientation program and the one-year residency training program, international medical graduates shall be selected by nonprofit community health centers to work in nonprofit community health centers and disproportionate share hospitals whose service areas include federally designated Health Professional Shortage Areas, Dental Professional Shortage Areas, Medically Underserved Areas, and Medically Underserved Populations for a period not to exceed three years.

(2) There shall be two residency programs operated under the auspices of a medical school in good standing, with one in southern California and one in northern California. These residency programs

shall be in family practice, internal medicine, or obstetrics and gynecology.

(3) After successfully completing the one-year residency program, the training institution for the one-year residency program for international medical graduates may transfer the program participant into an approved residency program.

(i) (1) All program participants shall be required to satisfy the medical curriculum requirements of Section 2089, the clinical instruction requirements of Section 2089.5, and the examination requirements of Section 2170 prior to being admitted into an approved residency program.

(2) Those international medical graduates who are transferred into an approved residency program shall be required to work in nonprofit community health centers or disproportionate share hospitals whose service areas include federally designated Health Professional Shortage Areas, Dental Professional Shortage Areas, Medically Underserved Areas, and Medically Underserved Populations for not less than three years after being fully licensed.

(j) For individuals in this program as specified in this section, the applicant status letter shall be deemed a license in good standing pursuant to the provisions of this article for the purpose of participation and reimbursement in all federal, state, and local health programs, including managed care organizations and health maintenance organizations.

(k) (1) The Director of General Medical Education or an equivalent position in the training institution of the one-year residency program for international medical graduates shall have the authority to make a recommendation to the Medical Board of California for the full medical licensure of an international medical graduate who has successfully completed the one-year residency program if the director believes, based on the performance and competency of international medical graduate, that the international medical graduate should be fully licensed.

(2) After reviewing the recommendation for full licensure from the director, the Medical Board of California shall have the authority to issue a permanent license to practice medicine in this state to the international medical graduate.

(*l*) If an international medical graduate desires to secure a permanent license to practice medicine from the board, he or she shall, among other things, be required to be admitted into an approved residency program.

(m) The Medical Board of California, in consultation with medical schools located in California, executive and medical directors of nonprofit community health centers, and with hospital administrators, shall provide oversight review of the implementation of this program. The Medical Board of California shall ensure that funding proposals by

appropriate institutions to implement these provisions meet the necessary funding thresholds to fulfill the intent of this program. Implementation of this program shall not proceed unless appropriate funding is secured. The Medical Board of California shall report to the Legislature every January the program is operational regarding the status of the program and the ability of the program to secure the funding necessary to carry out its required provisions.

SEC. 6. The programs in Sections 853 and 855 of the Business and Professions Code shall be implemented only if the necessary amount of nonstate resources are obtained. General Fund moneys shall not be used for these programs.

CHAPTER 1158

An act to add Section 1281.96 to the Code of Civil Procedure, relating to arbitration.

[Approved by Governor September 30, 2002. Filed with Secretary of State September 30, 2002.]

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

SECTION 1. Section 1281.96 is added to the Code of Civil Procedure, to read:

1281.96. (a) Except as provided in paragraph (2) of subdivision (b), any private arbitration company that administers or is otherwise involved in, a consumer arbitration, shall collect, publish at least quarterly, and make available to the public in a computer-searchable format, which shall be accessible at the Internet Web site of the private arbitration company, if any, and on paper upon request, all of the following information regarding each consumer arbitration within the preceding five years:

(1) The name of the nonconsumer party, if the nonconsumer party is a corporation or other business entity.

(2) The type of dispute involved, including goods, banking, insurance, health care, employment, and, if it involves employment, the amount of the employee's annual wage divided into the following ranges: less than one hundred thousand dollars ($100,000), one hundred thousand dollars ($100,000) to two hundred fifty thousand dollars ($250,000), inclusive, and over two hundred fifty thousand dollars ($250,000).

(3) Whether the consumer or nonconsumer party was the prevailing party.

(4) On how many occasions, if any, the nonconsumer party has previously been a party in an arbitration or mediation administered by the private arbitration company.

(5) Whether the consumer party was represented by an attorney.

(6) The date the private arbitration company received the demand for arbitration, the date the arbitrator was appointed, and the date of disposition by the arbitrator or private arbitration company.

(7) The type of disposition of the dispute, if known, including withdrawal, abandonment, settlement, award after hearing, award without hearing, default, or dismissal without hearing.

(8) The amount of the claim, the amount of the award, and any other relief granted, if any.

(9) The name of the arbitrator, his or her total fee for the case, and the percentage of the arbitrator's fee allocated to each party.

(b) (1) If the information required by subdivision (a) is provided by the private arbitration company in a computer-searchable format at the company's Internet Web site and may be downloaded without any fee, the company may charge the actual cost of copying to any person who requests the information on paper. If the information required by subdivision (a) is not accessible by the Internet, the company shall provide that information without charge to any person who requests the information on paper.

(2) Notwithstanding paragraph (1), a private arbitration company that receives funding pursuant to Chapter 8 (commencing with Section 465) of Division 1 of the Business and Professions Code, and that administers or conducts fewer than 50 consumer arbitrations per year may collect and publish the information required by subdivision (a) semiannually, provide the information only on paper, and charge the actual cost of copying.

(c) This section shall apply to any consumer arbitration commenced on or after January 1, 2003.

(d) No private arbitration company shall have any liability for collecting, publishing, or distributing the information required by this section.

CHAPTER 1159

An act to add Sections 1281.84 and 1287.1 to the Code of Civil Procedure, relating to arbitration.

[Approved by Governor September 30, 2002. Filed with Secretary of State September 30, 2002.]

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

SECTION 1. Section 1281.84 is added to the Code of Civil Procedure, to read:

1281.84. Any private arbitration company or self-regulatory organization (SRO) that administers a consumer arbitration in violation of Section 1281.6, 1281.81, 1281.82, 1281.92, or 1284.3 shall be subject, at the discretion of the court, to disgorgement of any administrative fee obtained as a result of the violation of these sections.

SEC. 2. Section 1287.1 is added to the Code of Civil Procedure, to read:

1287.1. If a court vacates an award in a consumer arbitration, an arbitrator or private arbitration company involved in the arbitration may not conduct or administer any further arbitration of the dispute, unless the consumer party so elects in writing prior to any rearbitration of the matter.

SEC. 3. This act shall become operative only if this bill and Assembly Bills 2574, 2915, and 3029 are enacted and become effective on or before January 1, 2003.

CHAPTER 1160

An act to amend Sections 16162 and 16164 of the Welfare and Institutions Code, relating to foster care.

[Approved by Governor September 30, 2002. Filed with Secretary of State September 30, 2002.]

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

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

(a) The Office of the State Foster Care Ombudsperson is a critical resource for youth in foster care. The office is an important source of information regarding the care and concerns of youth in foster care.

(b) The office has the potential to identify program and policy problems involving foster care and to make recommendations that can improve the child welfare system and the services to youth in foster care.

(c) Years of experience are required to develop an understanding of the issues involving foster care and to build successful relationships in order to facilitate the appropriate resolution of problems identified by the office.

(d) In order to maximize the effectiveness of the office, its staffing must be consistent and professional.

(e) The Legislature intends to increase the independence and autonomy of the office and the longevity of the position of the State Foster Care Ombudsperson in order to improve the ability of the office to respond appropriately and efficiently to concerns raised by individuals and to develop recommendations that will improve the care and services of youth in foster care.

SEC. 2. Section 16162 of the Welfare and Institutions Code is amended to read:

16162. The director, in consultation with a committee of interested individuals, shall appoint an ombudsperson qualified by training and experience to perform the duties of the office for a term of four years. The director may reappoint the ombudsperson for consecutive terms. The director shall select the committee members, the majority of whom shall be representatives of children's advocacy organizations and current or former foster youth.

SEC. 3. Section 16164 of the Welfare and Institutions Code is amended to read:

16164. (a) The Office of the State Foster Care Ombudsperson shall do all of the following:

(1) Disseminate information on the rights of children and youth in foster care and the services provided by the office. The rights of children and youths in foster care are listed in Section 16001.9. The information shall include notification that conversations with the office may not be confidential.

(2) Investigate and attempt to resolve complaints made by or on behalf of children placed in foster care, related to their care, placement, or services.

(3) Decide, in its discretion, whether to investigate a complaint, or refer complaints to another agency for investigation.

(4) Upon rendering a decision to investigate a complaint from a complainant, notify the complainant of the intention to investigate. If the office declines to investigate a complaint or continue an investigation, the office shall notify the complainant of the reason for the action of the office.

(5) Update the complainant on the progress of the investigation and notify the complainant of the final outcome.

(6) Document the number, source, origin, location, and nature of complaints.

(7) (A) Compile and make available to the Legislature all data collected over the course of the year including, but not limited to, the number of contacts to the toll-free telephone number, the number of complaints made, including the type and source of those complaints, the number of investigations performed by the office, the trends and issues

that arose in the course of investigating complaints, the number of referrals made, and the number of pending complaints.

(B) Present this compiled data, on an annual basis, at appropriate child welfare conferences, forums, and other events, as determined by the department, that may include presentations to, but are not limited to, representatives of the Legislature, the County Welfare Directors Association, child welfare organizations, children's advocacy groups, consumer and service provider organizations, and other interested parties.

(C) It is the intent of the Legislature that representatives of the organizations described in subparagraph (B) consider this data in the development of any recommendations offered toward improving the child welfare system.

(D) The compiled data shall be posted so that it is available to the public on the existing Web site of the State Foster Care Ombudsperson.

(8) Have access to any record of a state or local agency that is necessary to carry out his or her responsibilities, and may meet or communicate with any foster child in his or her placement or elsewhere.

(b) The office may establish, in consultation with a committee of interested individuals, regional or local foster care ombudsperson offices for the purposes of expediting investigations and resolving complaints, subject to appropriations in the annual Budget Act.

(c) (1) The office, in consultation with the California Welfare Directors Association, Chief Probation Officers of California, foster youth advocate and support groups, groups representing children, families, foster parents, children's facilities, and other interested parties, shall develop, no later than July 1, 2002, standardized information explaining the rights specified in Section 16001.9. The information shall be developed in an age-appropriate manner, and shall reflect any relevant licensing requirements with respect to foster care providers' responsibilities to adequately supervise children in care.

(2) The office, counties, foster care providers, and others may use the information developed in paragraph (1) in carrying out their responsibilities to inform foster children and youth of their rights pursuant to Section 1530.91 of the Health and Safety Code, Sections 27 and 16501.1, and this section.

SEC. 4. Section 16164 of the Welfare and Institutions Code is amended to read:

16164. (a) The Office of the State Foster Care Ombudsperson shall do all of the following:

(1) Disseminate information on the rights of children and youth in foster care and the services provided by the office. The rights of children and youths in foster care are listed in Section 16001.9. The information

shall include notification that conversations with the office may not be confidential.

(2) Investigate and attempt to resolve complaints made by or on behalf of children placed in foster care, related to their care, placement, or services. It is the intent of the Legislature that the Office of State Foster Care Ombudsperson shall address complaints brought by all foster youth, including gay, lesbian, bisexual, or transgender foster youth, regarding their care, placement, and services. The ombudsperson shall refer allegations of violations of licensing regulations to the Community Care Licensing Division, and shall refer allegations of civil rights violations to the Office of Civil Rights.

(3) Decide, in its discretion, whether to investigate a complaint, or refer complaints to another agency for investigation.

(4) Upon rendering a decision to investigate a complaint from a complainant, notify the complainant of the intention to investigate. If the office declines to investigate a complaint or continue an investigation, the office shall notify the complainant of the reason for the action of the office.

(5) Update the complainant on the progress of the investigation and notify the complainant of the final outcome.

(6) Document the number, source, origin, location, and nature of complaints.

(7) (A) Compile and make available to the Legislature all data collected over the course of the year, including, but not limited to, the number of contacts to the toll-free telephone number, the number of complaints made, including the type and source of those complaints, the number of investigations performed by the office, the number of referrals made, the trends and issues that arose in the course of investigating complaints, and the number of pending complaints.

(B) Present this compiled data, on an annual basis, at appropriate child welfare conferences, forums, and other events, as determined by the department, that may include presentations to, but are not limited to, representatives of the Legislature, the County Welfare Directors Association, child welfare organizations, children's advocacy groups, consumer and service provider organizations, and other interested parties.

(C) It is the intent of the Legislature that representatives of the organizations described in subparagraph (B) consider this data in the development of any recommendations offered toward improving the child welfare system.

(D) The compiled data shall be posted so that it is available to the public on the existing Web site of the State Foster Care Ombudsperson.

(8) Have access to any record of a state or local agency that is necessary to carry out his or her responsibilities, and may meet or communicate with any foster child in his or her placement or elsewhere.

(b) The office may establish, in consultation with a committee of interested individuals, regional or local foster care ombudsperson offices for the purposes of expediting investigations and resolving complaints, subject to appropriations in the annual Budget Act.

(c) (1) The office, in consultation with the California Welfare Directors Association, Chief Probation Officers of California, foster youth advocate and support groups, groups representing children, families, foster parents, children's facilities, and other interested parties, shall develop, no later than July 1, 2002, standardized information explaining the rights specified in Section 16001.9. The information shall be developed in an age-appropriate manner, and shall reflect any relevant licensing requirements with respect to foster care providers' responsibilities to adequately supervise children in care.

(2) The office, counties, foster care providers, and others may use the information developed in paragraph (1) in carrying out their responsibilities to inform foster children and youth of their rights pursuant to Section 1530.91 of the Health and Safety Code, Sections 27 and 16501.1, and this section.

SEC. 5. Section 4 of this bill incorporates amendments to Section 16164 of the Welfare and Institutions Code proposed by both this bill and AB 2651. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2003, (2) each bill amends Section 16164 of the Welfare Institutions Code, and (3) this bill is enacted after AB 2651, in which case Section 3 of this bill shall not become operative.

CHAPTER 1161

An act to amend Section 4426 of, and to repeal Section 4427 of, the Business and Professions Code, to amend Section 49557.2 of the Education Code, to amend Sections 1356, 1797.199, 53300, 100171, 120955, 124030, 124040, 124120, and 124250 of, to add Sections 26157, 104188, 124033, 124977, 125190, and 127280.1 to, and to add Article 6 (commencing with Section 101315) to Chapter 3 of Part 3 of Division 101 of, the Health and Safety Code, to amend Sections 12693.17, 12693.43, 12693.45, 12693.70, and 12693.981 of, and to amend, repeal, and add Section 12693.41 of, the Insurance Code, and to amend Sections 4094.2, 4380, 4418.3, 4418.7, 4640.6, 4643, 4646.5, 5600.8, 5869, 5881, 5882, 5883, 14005.41, 14011.6, 14019.3, 14051,

14085.7, 14085.8, 14103.6, 14105.2, 14105.3, 14105.31, 14105.33, 14105.337, 14105.34, 14105.35, 14105.37, 14105.38, 14105.39, 14105.405, 14105.42, 14105.43, 14105.45, 14125, 14132, 14132.26, 14132.88, 14132.95, 14163, 14495.10, 16809, 16809.4, and 18925 of, to add Sections 4418.2, 4418.25, 4781.5, 5767, 14000.03, 14000.5, 14011.7, 14011.8, 14011.9, 14105.18, 14105.332, 14105.46, 14105.47, 14105.8, 14105.85, 14132.73, and 14150 to, to add and repeal Sections 4631.5 and 14105.436 of, to repeal Sections 4847, 14105.65, 14105.91, 14105.915, and 14105.916 of, and to repeal and amend Sections 14105.4 and 14105.41 of, the Welfare and Institutions Code, relating to health, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 30, 2002. Filed with Secretary of State September 30, 2002.]

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

SECTION 1. Section 4426 of the Business and Professions Code is amended to read:

4426. The State Department of Health Services shall conduct a study of the adequacy of Medi-Cal pharmacy reimbursement rates including the cost of providing prescription drugs and services.

SEC. 2. Section 4427 of the Business and Professions Code is repealed.

SEC. 3. Section 49557.2 of the Education Code is amended to read:

49557.2. (a) (1) Effective July 1, 2003, 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 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 entity designated by the State Department of Health Services to make an accelerated determination and 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 entity designated by the State Department of Health Services to make an accelerated determination and 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.

(E) A notification that the school lunch application information will only be used by the entity designated by the State Department of Health Services to make an accelerated determination and 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 for any purpose other than the administration of the Medi-Cal program.

(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, 2003. 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, 2003, school districts and county superintendents of schools may implement a process to share information provided on the entity designated by the State Department of Health Services to make an accelerated determination and the School Lunch Program application with the entity designated by the State Department of Health Services to make an accelerated determination and the local agency that determines eligibility under the Medi-Cal program, and shall share this information with those entities, 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 entity designated by the State Department of Health Services to make an accelerated determination and 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. 4. Section 1356 of the Health and Safety Code is amended to read:

1356. (a) Each plan applying for licensure under this chapter shall reimburse the director for the actual cost of processing the application, including overhead, up to an amount not to exceed twenty-five thousand dollars ($25,000). The cost shall be billed not more frequently than monthly and shall be remitted by the applicant to the director within 30 days of the date of billing. The director shall not issue a license to any applicant prior to receiving payment in full for all amounts charged pursuant to this subdivision.

(b) In addition to other fees and reimbursements required to be paid under this chapter, each licensed plan shall pay to the director an amount as estimated by the director for the ensuing fiscal year, as a reimbursement of its share of all costs and expenses, including, but not limited to, costs and expenses associated with routine financial examinations, grievances and complaints including maintaining a toll-free number for consumer grievances and complaints, investigation and enforcement, medical surveys and reports, and overhead, reasonably incurred in the administration of this chapter and not otherwise recovered by the director under this chapter or from the Managed Care Fund. The amount may be paid in two equal installments. The first installment shall be paid on or before August 1 of each year, and the second installment shall be paid on or before December 15 of each year. The amount paid by each plan, except a plan offering only specialized health care service plan contracts, shall be twelve thousand five hundred dollars ($12,500), plus an amount up to, but not exceeding, an amount computed in accordance with the following schedule:

Plan Enrollment	Amount of Assessment
0 to 25,000	$0 + 65 cents for each enrollee
25,001 to 75,000	$16,250 + 53 cents for each enrollee in excess of 25,000
75,001 to 150,000	$42,750 + 50 cents for each enrollee in excess of 75,000
150,001 to 300,000	$80,250 + 47 cents for each enrollee in excess of 150,000
over 300,000	$150,750 + 45 cents for each enrollee in excess of 300,000

Plans offering only specialized health care service plan contracts shall pay seven thousand five hundred dollars ($7,500), plus an amount up to, but not exceeding, an amount computed in accordance with the following schedule:

Plan Enrollment	Amount of Assessment
0 to 25,000	$0 + 48 cents for each enrollee
25,001 to 75,000	$12,000 + 36 cents for each enrollee in excess of 25,000
75,001 to 150,000	$30,000 + 30 cents for each enrollee in excess of 75,000
150,001 to 300,000	$52,500 + 26 cents for each enrollee in excess of 150,000
over 300,000	$91,500 + 24 cents for each enrollee in excess of 300,000

The amount paid by each plan shall be for each enrollee enrolled in its plan in this state as of the preceding March 31, and shall be fixed by the director by notice to all licensed plans on or before June 15 of each year. A plan that is unable to report the number of enrollees enrolled in the plan because it does not collect that data, shall provide the director with an estimate of the number of enrollees enrolled in the plan and the method used for determining the estimate. The director may, upon giving written notice to the plan, revise the estimate if the commissioner determines that the method used for determining the estimate was not reasonable.

In determining the amount assessed, the director shall consider all appropriations from the Managed Care Fund for the support of this chapter and all reimbursements provided for in this chapter.

(c) Each licensed plan shall also pay two thousand dollars ($2,000), plus an amount up to, but not exceeding, forty-eight hundredths of one cent ($0.0048) for each enrollee for the purpose of reimbursing its share of all costs and expenses, including overhead, reasonably anticipated to

be incurred by the department in administering Sections 1394.7 and 1394.8 during the current fiscal year. The amount charged shall be remitted within 30 days of the date of billing.

(d) In no case shall the reimbursement, payment, or other fee authorized by this section exceed the cost, including overhead, reasonably incurred in the administration of this chapter.

(e) The director by notice to all licensed plans on or before September 15 of each year, may require health care service plans to pay an additional assessment to provide the department with sufficient revenues to support costs and expenses as set forth in this section and subdivision (b) of Section 1341.4 for the 2000–01, 2001–02, and 2002–03 fiscal years. Any plan that did not pay its assessment as required under this subdivision for the 2001–02 fiscal year shall be assessed the amount due for the 2001–02 fiscal year in the 2002–03 fiscal year, in addition to the amount due in the 2002–03 fiscal year. The assessment pursuant to this subdivision is separate and independent of the assessment in subdivision (b), and may not be aggregated for the purposes of limitation or otherwise with the assessment in subdivision (b). The assessment pursuant to this subdivision is not subject to the limitations imposed on assessments pursuant to Section 1356.1. In imposing an assessment pursuant to this subdivision the director shall levy on each plan an amount determined by the director using the categories of plans in the schedules set forth in subdivision (b). The assessment shall be paid in full or in two equal installments, as determined by the department. On July 1, 2003, and thereafter, the director may raise the assessment limit pursuant to subdivision (b) to incorporate annual expenditure levels set forth in this subdivision.

(f) For the purpose of calculating the assessment under this section, an enrollee who is enrolled in one plan and who receives health care services under arrangements made by another plan or plans, whether pursuant to a contract, agreement, or otherwise, shall be considered to be enrolled in each of the plans.

SEC. 5. Section 1797.199 of the Health and Safety Code is amended to read:

1797.199. (a) There is hereby created in the State Treasury, the Trauma Care Fund, which, notwithstanding Section 13340 of the Government Code, is hereby continuously appropriated without regard to fiscal years to the authority for the purposes specified in subdivision (c).

(b) The fund shall contain any moneys deposited in the fund pursuant to appropriation by the Legislature or from any other source, as well as, notwithstanding Section 16305.7 of the Government Code, any interest and dividends earned on moneys in the fund.

(c) Moneys in the fund shall be expended by the authority to provide for allocations to local EMS agencies, for distribution to local EMS agency-designated trauma centers provided for by this chapter.

(d) Within 30 days of the effective date of the enactment of an appropriation for purposes of implementing this chapter, the authority shall request all local EMS agencies with an approved trauma plan, that includes at least one designated trauma center, to submit within 45 days of the request the total number of trauma patients and the number of trauma patients at each facility that were reported to the local trauma registry for the most recent fiscal year for which data are available, pursuant to Section 100257 of Title 22 of the California Code of Regulations. However, the local EMS agency's report shall not include any registry entry that is in reference to a patient who is discharged from the trauma center's emergency department without being admitted to the hospital unless the nonadmission is due to the patient's death or transfer to another facility. Any local EMS agency that fails to provide these data shall not receive funding pursuant to this section.

(e) Except as provided in subdivisions (j) and (o), the authority shall distribute all funds to local EMS agencies with an approved trauma plan that includes at least one designated trauma center in the local EMS agency's jurisdiction as of July 1 of the fiscal year in which funds are to be distributed.

(1) The amount provided to each local EMS agency shall be in the same proportion as the total number of trauma patients reported to the local trauma registry for each local EMS agency's area of jurisdiction compared to the total number of all trauma patients statewide as reported under subdivision (d).

(2) The authority shall send a contract to each local EMS agency that is to receive funds within 30 days of receiving the required data and shall distribute the funds to a local EMS agency within 30 days of receiving a signed contract and invoice from the agency.

(f) Local EMS agencies that receive funding under this chapter shall distribute all those funds to eligible trauma centers, except that an agency may expend 1 percent for administration. It is the intent of the Legislature that the funds distributed to eligible trauma centers be spent on trauma services. The local EMS agency may utilize a grant-based system, a reimbursement-based system, or other appropriate methodology to comply with this section. Local EMS agencies shall take the following factors into consideration when determining the distribution amounts for each trauma center:

(1) The volume of uninsured trauma patients treated at the trauma center.

(2) The existence of a high percentage of uninsured trauma patients relative to the total number of trauma patients treated at the trauma center.

(3) The acuity mix of uninsured trauma patients treated at the trauma center.

(g) A trauma center shall be eligible for funding under this section if it is designated as a trauma center by a local EMS agency pursuant to Section 1798.165 and complies with the requirements of this section. Both public and private hospitals designated as trauma centers shall be eligible for funding.

(h) A trauma center that receives funding under this section shall agree to remain a trauma center through June 30 of the fiscal year in which it receives funding. If the trauma center ceases functioning as a trauma center, it shall pay back to the local EMS agency a pro rata portion of the funding that has been received. If there are one or more trauma centers remaining in the local EMS agency's service area, the local EMS agency shall distribute the funds among the other trauma centers. If there is no other trauma center within the local EMS agency's service area, the local EMS agency shall return the moneys to the authority. The authority shall deposit any such funds into the reserve described in subdivision (j). In the case of a local EMS agency that distributes funds using a reimbursement or fee-for-service system, a trauma center that ceases functioning as a trauma center shall only be required to pay back a pro rata portion of the minimum distributed as described in subdivision (i).

(i) Notwithstanding subdivision (f), the local EMS agency shall provide from the funds that the local EMS agency receives from the authority a minimum amount of one hundred fifty thousand dollars ($150,000) to each Level I or Level II trauma center to assist those centers in ensuring trauma center viability. The local EMS agency shall provide a Level III trauma center a minimum amount of fifty thousand dollars ($50,000) for this purpose. If a local EMS agency's distribution pursuant to subdivision (e) is less than the amount necessary for each trauma center within the local EMS agency's jurisdiction to receive the minimum amount provided by this subdivision, the authority shall include in its distribution to the agency an additional amount of funds necessary to make up the minimum amount pursuant to paragraph (1) of subdivision (j) plus 1 percent of the added amount for local EMS agency administrative costs. Based upon qualifying patient volume figures and the distribution factors established in subdivision (f), a trauma center designated as a Level IV may receive funding as determined appropriate by the local EMS agency.

(j) Notwithstanding subdivision (e), the authority shall reserve 6 percent of any funds appropriated to the Trauma Care Fund for

distribution during the same fiscal year. The authority may spend these funds for the purposes specified in paragraphs (1) to (3), inclusive.

(1) To provide to a local EMS agency, the amount that the agency needs to make up the full minimum amount specified in subdivision (i).

(2) To provide a minimum amount to a trauma center that was not designated on July 1 of the fiscal year as specified in subdivision (e) but which becomes designated by January 1 of any fiscal year in which funds are being distributed pursuant to this section. In the case of such a newly designated center, the minimum distribution shall equal one-half of the minimum distribution described in subdivision (i), provided the local EMS agency makes an application to the authority for this purpose by February 1 of the same fiscal year.

(3) To the extent that there are funds in the reserve after the distributions provided by paragraphs (1) and (2) of this subdivision, to provide additional amounts to a local EMS agency where the distribution under subdivision (f) does not provide an accurate reflection of its total trauma volume. Any local EMS agency that believes the distribution under subdivision (f) does not provide an accurate accounting of its total trauma patient volume may make application to the authority for an adjustment.

(A) The application shall state the reason for the request and shall include supporting data.

(B) The authority shall consider all applications submitted pursuant to this paragraph and received by February 1 of the fiscal year.

(C) Based on the application and its supporting information, the authority shall determine the amount, if any, that the local agency should receive in addition to the amounts specified in subdivision (e) and shall allocate an appropriate amount of the reserve in accordance with its determination.

(k) In order to receive funds pursuant to this section, an eligible trauma center shall submit, pursuant to a contract between the trauma center and the local EMS agency, relevant and pertinent data requested by the local EMS agency. A trauma center shall demonstrate that it is appropriately submitting data to the local EMS agency's trauma registry and a local EMS agency shall audit the data annually within two years of a distribution from the local EMS agency to a trauma center. Any trauma center receiving funding pursuant to this section shall report to the local EMS agency how the funds were used to support trauma services.

(*l*) It is the intent of the Legislature that all moneys appropriated to the fund be distributed to local EMS agencies during the same year the moneys are appropriated. To the extent that any moneys are not distributed by the authority during the fiscal year in which the moneys are appropriated, the moneys shall remain in the fund and be eligible for

distribution pursuant to this section during subsequent fiscal years, except that the minimum distribution specified in subdivision (i) shall be provided to the extent that moneys are available in the fund.

(m) By October 31, 2002, the authority shall develop criteria for the standardized reporting of trauma patients to local trauma registries. The authority shall seek input from local EMS agencies to develop the criteria. All local EMS agencies shall utilize the trauma patient criteria for reporting trauma patients to local trauma registries by July 1, 2003.

(n) By December 31 of the fiscal year following any fiscal year in which funds are distributed pursuant to this section, a local EMS agency that has received funds from the authority pursuant to this chapter shall provide a report to the authority that details the amount of funds distributed to each trauma center, the amount of any balance remaining, and the amount of any claims pending, if any, and describes how the respective centers used the funds to support trauma services. The report shall also describe the local EMS agency's mechanism for distributing the funds to trauma centers, a description of their audit process and criteria, and a summary of the most recent audit results.

(o) The authority may retain from any appropriation to the fund an amount sufficient to implement this section, up to two hundred eighty thousand dollars ($280,000). This amount may be adjusted to reflect any increases provided for wages or operating expenses as part of the authority's budget process.

SEC. 5.5. Section 26157 is added to the Health and Safety Code, to read:

26157. (a) The department may receive voluntary contributions to support the department's activities in providing guidance, developing standards and guidelines and permissible exposure limits, and adopting regulations relating to indoor mold hazards, including, but not limited to, duties included under this chapter.

(b) The contributions shall be deposited in the Public Health Protection from Indoor Mold Hazards Fund, which is hereby created in the State Treasury. Notwithstanding Section 13340 of the Government Code, moneys in the fund shall be continuously appropriated to the department without regard to fiscal years and shall be used to support the department's activities in providing guidance, developing standards and guidelines and permissible exposure limits, and adopting regulations relating to indoor mold hazards, including, but not limited to, duties included under this chapter to the extent that funding is available.

SEC. 6. Section 53300 of the Health and Safety Code is amended to read:

53300. (a) No more than 10 percent of the amount appropriated in a fiscal year for the purposes of this chapter may be used for state administration of this chapter, including evaluation and technical

assistance. Technical assistance shall include, but is not limited to, assisting with collaborations, providing information, and convening training workshops. The Legislature shall be notified of the administrative costs of this program pursuant to Section 28 of the Budget Act.

(b) Notwithstanding the allocation of funds in the Budget Act of 2000 for the supportive housing initiative to the local assistance Item 4440-101-0001, up to 10 percent of the funds may be spent for administrative costs, as defined in subdivision (a).

(c) Notwithstanding any other provision of law, the lead agency shall make all grant awards from funds allocated in the Budget Act of 2001 for the supportive housing initiative no later than June 30, 2002, and shall expend the funds allocated for those grants no later than June 30, 2005, except for grants awarded for housing costs, as specified in paragraph (1) of subdivision (b) of Section 53275.

SEC. 7. Section 100171 of the Health and Safety Code is amended to read:

100171. Notwithstanding any other provision of law, whenever the department is authorized or required by statute, regulation, due process (14th amendment, United States Constitution; subdivision (a) of Section 7 of Article I, California Constitution), or a contract, to conduct an adjudicative hearing leading to a final decision of the director or the department, the following shall apply:

(a) The proceeding shall be conducted pursuant to the administrative adjudication provisions of Chapter 4.5 (commencing with Section 11400) and Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, except as specified in this section.

(b) Notwithstanding Section 11502 of the Government Code, whenever the department conducts a hearing under Chapter 4.5 (commencing with Section 11400) or Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, the hearing shall be conducted before an administrative law judge selected by the department and assigned to a hearing office that complies with the procedural requirements of Chapter 4.5 (commencing with Section 11400) of Part 1 of Division 3 of Title 2 of the Government Code.

(c) (1) Notwithstanding Section 11508 of the Government Code, whenever the department conducts a hearing under Chapter 4.5 (commencing with Section 11400) or Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, the time and place of the hearing shall be determined by the staff assigned to the hearing office of the department, except as provided in paragraph (2) or unless the department by regulation specifies otherwise.

(2) Formal hearings requested by institutional Medi-Cal providers and health facilities shall be held in Sacramento.

(d) (1) Unless otherwise specified in this section, the following sections of the Government Code shall apply to any adjudicative hearing conducted by the department only if the department has not, by regulation, specified an alternative procedure for the particular type of hearing at issue: Section 11503 (relating to accusations), Section 11504 (relating to statements of issues), Section 11505 (relating to the contents of the statement to respondent), Section 11506 (relating to the notice of defense), Section 11507.6 (relating to discovery rights and procedures), Section 11508 (relating to the time and place of hearings), and Section 11516 (relating to amendment of accusations).

(2) Any alternative procedure specified by the department in accordance with this subdivision shall conform to the purpose of the Government Code provision it replaces insofar as it is possible to do so consistent with the specific procedural requirements applicable to the type of hearing at issue.

(3) Any alternative procedures adopted by the department under this subdivision shall not diminish the amount of notice given of the issues to be heard by the department or deprive appellants of the right to discovery suitable to the particular proceedings. Except as specified in paragraph (2) of subdivision (c), modifications of timeframes or of the place of hearing made by regulation may not lengthen timeframes within which the department is required to act nor require hearings to be held at a greater distance from the appellant's place of residence or business than is the case under the otherwise applicable Government Code provision.

(e) The specific timelines specified in Section 11517 of the Government Code shall not apply to any adjudicative hearing conducted by the department to the extent that the department has, by regulation, specified different timelines for the particular type of hearing at issue.

(f) In the case of any adjudicative hearing conducted by the department, ''transcript,'' as used in subdivision (c) of Section 11517 of the Government Code, shall be deemed to include any alternative form of recordation of the oral proceedings, including, but not limited to, an audiotape.

(g) Pursuant to Section 11415.50 of the Government Code, the department may, by regulation, provide for any appropriate informal procedure to be used for an informal level of review that does not itself lead to a final decision of the department or the director. The procedures specified in Article 10 (commencing with Section 11445.10) of Chapter 4.5 of Part 1 of Division 3 of Title 2 of the Government Code shall not apply to any such an informal level of review. Informal conferences

concerning appeals by institutional Medi-Cal providers and health facilities may be held in Sacramento or Los Angeles.

(h) Notwithstanding any other provision of law, any adjudicative hearing conducted by the department that is conducted pursuant to a federal statutory or regulatory requirement that contains specific procedures may be conducted pursuant to those procedures to the extent they are inconsistent with the procedures specified in this section.

(i) Nothing in this section shall apply to a fair hearing involving a Medi-Cal beneficiary insofar as the hearing is, by agreement or otherwise, heard before an administrative law judge employed by the State Department of Social Services, or insofar as the hearing is being held pursuant to Division 4.5 (commencing with Section 4500) of the Welfare and Institutions Code in connection with services provided by the State Department of Developmental Services under applicable federal medicaid waivers. Nothing in this subdivision shall be interpreted as abrogating the authority of the State Department of Health Services as the single state agency under the state medicaid plan.

(j) Nothing in this provision shall supersede express provisions of law that apply to any hearing that is not adjudicative in nature or that does not involve due process rights specific to an individual or specific individuals, as opposed to the general public or a segment of the general public.

SEC. 8. Article 6 (commencing with Section 101315) is added to Chapter 3 of Part 3 of Division 101 of the Health and Safety Code, to read:

Article 6. Federal Funding for Bioterrorism Preparedness and other Public Health Threats

101315. (a) Federal funding received by the State Department of Health Services for bioterrorism preparedness and emergency response is subject to appropriation in the annual Budget Act.

(b) This article shall govern the purposes for which federal funding may be allocated and expended by local health jurisdictions for the prevention of, and response to, bioterrorist attacks and other public health emergencies pursuant to the federally approved collaborative state-local plan.

(c) A local health jurisdiction shall be ineligible to receive funding from appropriations made for purposes of this article when that local health jurisdiction receives directly or through another local jurisdiction federal funding for the same purposes. Moneys appropriated in the annual Budget Act for purposes of this article that would have been allocated to a local health jurisdiction that is ineligible, pursuant to this

subdivision, to receive funding shall be allocated, as provided in Section 101317, among the remaining local health jurisdictions that are eligible.

(d) Funds appropriated for the purposes of this article shall not be used to supplant funding for existing levels of service and shall only be used for purposes specified in Section 101317.

101317. (a) For purposes of this article, allocations shall be made to the administrative bodies of qualifying local health jurisdictions described as public health administrative organizations in Section 101185, and pursuant to Section 101315, in the following manner:

(1) (A) For the 2003–04 fiscal year and subsequent fiscal years, to the administrative bodies of each local health jurisdiction, a basic allotment of one hundred thousand dollars ($100,000), subject to the availability of funds appropriated in the annual Budget Act or some other act.

(B) For the 2002–03 fiscal year, the basic allotment of one hundred thousand dollars ($100,000) shall be reduced by the amount of federal funding allocated as part of a basic allotment for the purposes of this article to local health jurisdictions in the 2001–02 fiscal year.

(2) (A) Except as provided in subdivision (c), after determining the amount allowed for the basic allotment as provided in paragraph (1), the balance of the annual Budget Act appropriation for purposes of this article, if any, shall be allotted on a per capita basis to the administrative bodies of each local health jurisdiction in the proportion that the population of that local health jurisdiction bears to the population of all eligible local health jurisdictions of the state.

(B) The population estimates used for the calculation of the per capita allotment pursuant to subparagraph (A) shall be based on the Department of Finance's E-1 Report, ''City/County Populations Estimates with Annual Percentage Changes'' as of January 1 of the previous year. However, if within a local health jurisdiction there are one or more city health jurisdictions, the local health jurisdiction shall subtract the population of the city or cites from the local health jurisdiction total population for purposes of calculating the per capita total.

(b) If the amounts appropriated in the annual Budget Act are insufficient to fully fund the allocations specified in subdivision (a), the department shall prorate and adjust each local health jurisdiction's allocation so that the total amount allocated equals the amount appropriated.

(c) For the 2002–03 fiscal year and subsequent fiscal years, where the federally approved collaborative state-local plan identifies an allocation method, other than the basic allotment and per capita method described in subdivision (a), for specific funding to a local public health jurisdiction, including, but not limited to, funding laboratory training,

chemical and nuclear terrorism preparedness, and information technology approaches, that funding shall be paid to the administrative bodies of those local health jurisdictions in accordance with the federally approved collaborative state-local plan for bioterrorism preparedness and other public health threats in the state.

(d) Funds appropriated pursuant to the annual Budget Act for allocation to local health jurisdictions pursuant to this article shall be disbursed quarterly to local health jurisdictions beginning July 1, 2002, using the following process:

(1) Each fiscal year, upon the submission of an application for funding by the administrative body of a local health jurisdiction, the department shall make the first quarterly payment to each eligible local health jurisdiction. That application shall include a plan and budget for the local program that is in accordance with the department's plans and priorities for bioterrorism preparedness and response, and other public health threats and emergencies, and a certification by the chairperson of the board of supervisors or the mayor of a city with a local health department that the funds received pursuant to this article will not be used to supplant other funding sources in violation of subdivision (d) of Section 101315.

(2) The department shall establish procedures and a format for the submission of the local health jurisdiction's plan and budget. The local health jurisdiction's plan shall be consistent with the department's plans and priorities for bioterrorism preparedness and response, and other public health threats and emergencies, in accordance with requirements specified in the department's federal grant award. Payments to local health jurisdictions beyond the first quarter shall be contingent upon the approval of the department of the local health jurisdiction's plan and the local health jurisdiction's progress in implementing the provisions of the local health jurisdiction's plan, as determined by the department.

(3) If a local health jurisdiction does not apply or submits a noncompliant application for its allocation, those funds provided under this article may be redistributed according to subdivision (a) to the remaining local health jurisdictions.

(e) Funds shall be used for activities to improve and enhance local health jurisdictions' preparedness for and response to bioterrorism and other public health threats and emergencies, including laboratory training and information technology, and for any other purposes, as determined by the department, that are consistent with the purposes for which the funds were appropriated.

(f) Any local health jurisdiction that receives funds pursuant to this article shall deposit them in a special Local Public Health Preparedness Trust Fund established solely for this purpose before transferring or expending the funds for any of the uses allowed pursuant to this article.

The interest earned on moneys in the fund shall accrue to the benefit of the fund and shall be expended for the same purposes as other moneys in the fund.

(g) (1) A local health jurisdiction that receives funding pursuant to this article shall submit reports that display cost data and the activities funded by moneys deposited in its Local Public Health Preparedness Trust Fund to the department on a regular basis in a form and according to procedures prescribed by the department.

(2) The department, in consultation with local health jurisdictions, shall develop required content for the reports required under paragraph (1), which shall include, but shall not be limited to, data and information needed to implement this article and to satisfy federal reporting requirements. The chairperson of the board of supervisors or the mayor of a city with a local health department shall certify the accuracy of the reports and that the moneys appropriated for the purposes of this article have not been used to supplant other funding sources.

(h) The administrative body of a local health jurisdiction may enter into a contract with the department and the department may enter into a contract with that local health jurisdiction for the department to administer all or a portion of the moneys allocated to the local health jurisdiction pursuant to this article.

(i) The department may recoup from a local health jurisdiction any moneys allocated pursuant to this article that are unspent or that are not expended for purposes specified in subdivision (d). The department may also recoup funds expended by a local health jurisdiction in violation of subdivision (d) of Section 101315. The department may withhold quarterly payments of moneys to a local health jurisdiction if the local health jurisdiction is not in compliance with this article or the terms of that local health jurisdiction's plan as approved by the department. Before any funds are recouped or withheld from a local health jurisdiction, the department shall meet with local health officials to discuss the status of the unspent moneys or the disputed use of the funds or both.

(j) Moneys made available for bioterrorism preparedness pursuant to this article in the 2001–02 fiscal year shall be available for expenditure and encumbrance until June 30, 2003. Moneys made available for bioterrorism preparedness pursuant to this article from July 1, 2002, to August 30, 2003, inclusive, shall be available for expenditure and encumbrance until August 30, 2004, subject to extension of the federal grant authority.

101319. Due to the need to rapidly implement, and to provide local health jurisdictions with timely funding for the purposes of, this article, funds appropriated in the annual Budget Act for purposes of this article for the 2002–03 fiscal year and subsequent fiscal years shall be allocated

through the use of agreements, which shall not be subject to Part 2 (commencing with Section 10100) of the Public Contract Code.

SEC. 9. Section 104188 is added to the Health and Safety Code, to read:

104188. The maximum indirect cost rate that may be charged on any cancer research program grant awarded to any institution under this article shall not be more than 25 percent of the institution's direct costs.

SEC. 10. Section 120955 of the Health and Safety Code is amended to read:

120955. (a) To the extent that state and federal funds are appropriated in the annual Budget Act for these purposes, the director shall establish and may administer a program to provide drug treatments to persons infected with human immunodeficiency virus (HIV), the etiologic agent of acquired immune deficiency syndrome (AIDS). The director shall develop, maintain, and update as necessary a list of drugs to be provided under this program. Drugs on the list shall include, but not be limited to, the drugs zidovudine (AZT) and aerosolized pentamidine.

(b) The director may grant funds to a county public health department through standard agreements to administer this program in that county. To maximize the recipients' access to drugs covered by this program, the director shall urge the county health department in counties granted these funds to decentralize distribution of the drugs to the recipients.

(c) The director shall establish a rate structure for reimbursement for the cost of each drug included in the program. Rates shall not be less than the actual cost of the drug. However, the director may purchase a listed drug directly from the manufacturer and negotiate the most favorable bulk price for that drug.

(d) Manufacturers of the drugs on the list shall pay the department a rebate equal to the rebate that would be applicable to the drug under Section 1927(c) of the federal Social Security Act (42 U.S.C. Sec. 1396r-8(c)) plus an additional rebate to be negotiated by each manufacturer with the department, except that no rebates shall be paid to the department under this section on drugs for which the department has received a rebate under Section 1927(c) of the federal Social Security Act (42 U.S.C. Sec. 1396r-8(c)) or that have been purchased on behalf of county health departments or other eligible entities at discount prices made available under Section 256b of Title 42 of the United States Code.

(e) The department shall submit an invoice, not less than two times per year, to each manufacturer for the amount of the rebate required by subdivision (d).

(f) Drugs may be removed from the list for failure to pay the rebate required by subdivision (d), unless the department determines that

removal of the drug from the list would cause substantial medical hardship to beneficiaries.

(g) The department may adopt emergency regulations to implement amendments to this chapter made during the 1997–98 Regular Session, in accordance with the Administrative Procedure Act, Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. The initial adoption of emergency regulations shall be deemed to be an emergency and considered by the Office of Administrative Law as necessary for the immediate preservation of the public peace, health and safety, or general welfare. Emergency regulations adopted pursuant to this section shall remain in effect for no more than 180 days.

(h) Reimbursement under this chapter shall not be made for any drugs that are available to the recipient under any other private, state, or federal programs, or under any other contractual or legal entitlements, except that the director may authorize an exemption from this subdivision where exemption would represent a cost savings to the state.

SEC. 11. Section 124030 of the Health and Safety Code is amended to read:

124030. As used in this article and Section 120475:

(a) ''State board'' means the State Maternal, Child, and Adolescent Health Board.

(b) ''Department'' means the department.

(c) ''Director'' means the director.

(d) ''Governing body'' means the county board of supervisors or boards of supervisors in the case of counties acting jointly.

(e) ''Local board'' means local maternal, child, and adolescent health board.

(f) ''Local health jurisdiction'' means county health department or combined health department in the case of counties acting jointly or city health department within the meaning of Section 101185.

(g) ''Child Health and Disability Prevention provider'' or ''CHDP provider'' means any of the following, if approved for participation in the Child Health and Disability Prevention program by the community Child Health and Disability program director in accordance with program standards and as certified by the department:

(1) A physician licensed to practice medicine in California.

(2) A family nurse practitioner certified pursuant to Sections 2834 and 2836 of the Business and Professions Code.

(3) A pediatric nurse practitioner certified pursuant to Sections 2834 and 2836 of the Business and Professions Code.

(4) A primary care center, clinic, or other public or private agency or organization that provides outpatient health care services.

(5) A physicians' group.

(6) A licensed clinical laboratory.

SEC. 12. Section 124033 is added to the Health and Safety Code, to read:

124033. (a) Commencing July 1, 2003, all applications for services under the Child Health and Disability Prevention program shall be filed electronically in accordance with subdivision (b) of Section 14011.7 of the Welfare and Institutions Code.

(b) To implement the program described in subdivisions (b) to (e), inclusive, of Section 14011.7 of the Welfare and Institutions Code for the use of an electronic application for the Child Health and Disability Prevention program and for preenrollment into the Medi-Cal program or the Healthy Families Program, the following shall apply:

(1) The department may contract with public or private entities, or utilize existing health care service provider enrollment and payment mechanisms, including the Medi-Cal program's fiscal intermediary, only if services provided under the program are specifically identified and reimbursed in a manner that appropriately claims federal financial reimbursement.

(2) Contracts, including the Medi-Cal program fiscal intermediary contract for the Child Health and Disability Prevention Program, including any contract amendment, any system change pursuant to a change order, and any project or systems development notice shall be exempt from Part 2 (commencing with Section 10100) of Division 2 of the Public Contract Code, Chapter 7 (commencing with Section 11700) of Part 1 of Division 3 of Title 2 of the Government Code, Section 19130 of the Government Code, and any policies, procedures, or regulations authorized by these laws.

SEC. 13. Section 124040 of the Health and Safety Code is amended to read:

124040. (a) The governing body of each county or counties shall establish a community child health and disability prevention program for the purpose of providing early and periodic assessments of the health status of children in the county or counties by July 1, 1974. However, this shall be the responsibility of the department for all counties that contract with the state for health services. Contract counties, at the option of the board of supervisors, may provide services pursuant to this article in the same manner as other county programs, provided the option is exercised prior to the beginning of each fiscal year. Each plan shall include, but is not limited to, the following requirements:

(1) Outreach and educational services.

(2) Agreements with public and private facilities and practitioners to carry out the programs.

(3) Health screening and evaluation services for all children including a physical examination, immunizations appropriate for the

child's age and health history, and laboratory procedures appropriate for the child's age and population group performed by, or under the supervision or responsibility of, a physician licensed to practice medicine in California or by a certified family nurse practitioner or a certified pediatric nurse practitioner.

(4) Referral for diagnosis or treatment when needed, including, for all children eligible for Medi-Cal, referral for treatment by a provider participating in the Medi-Cal program of the conditions detected, and methods for assuring referral is carried out.

(5) Recordkeeping and program evaluations.

(6) The health screening and evaluation part of each community child health and disability prevention program plan shall include, but is not limited to, the following for each child:

(A) A health and development history.

(B) An assessment of physical growth.

(C) An examination for obvious physical defects.

(D) Ear, nose, mouth, and throat inspection, including inspection of teeth and gums, and for all children three years of age and older who are eligible for Medi-Cal, referral to a dentist participating in the Medi-Cal program.

(E) Screening tests for vision, hearing, anemia, tuberculosis, diabetes, and urinary tract conditions.

(7) An assessment of nutritional status.

(8) An assessment of immunization status.

(9) Where appropriate, testing for sickle-cell trait, lead poisoning, and other tests that may be necessary to the identification of children with potential disabilities requiring diagnosis and possibly treatment.

(10) For all children eligible for Medi-Cal, necessary assistance with scheduling appointments for services and with transportation.

(b) Dentists receiving referrals of children eligible for Medi-Cal under this section shall employ procedures to advise the child's parent or parents of the need for and scheduling of annual appointments.

(c) Standards for procedures to carry out health screening and evaluation services and to establish the age at which particular tests should be carried out shall be established by the director. At the discretion of the department, these health screening and evaluation services may be provided at the frequency provided under the Healthy Families Program and permitted in managed care plans providing services under the Medi-Cal program, and shall be contingent upon appropriation in the annual Budget Act. Immunizations may be provided at the frequency recommended by the Committee on Infectious Disease of the American Academy of Pediatrics and the Advisory Committee on Immunization Practices of the Centers for Disease Control and Prevention.

(d) Each community child health and disability prevention program shall, pursuant to standards set by the director, establish a record system that contains a health case history for each child so that costly and unnecessary repetition of screening, immunization and referral will not occur and appropriate health treatment will be facilitated as specified in Section 124085.

SEC. 14. Section 124120 of the Health and Safety Code is amended to read:

124120. The department may conduct a community outreach and awareness campaign to inform medical providers, pregnant women, and the families of newborns and infants on the availability of the newborn hearing screening program and the value of early hearing testing. The outreach and awareness campaign shall be conducted by an independent contractor.

SEC. 15. Section 124250 of the Health and Safety Code is amended to read:

124250. (a) The following definitions shall apply for purposes of this section:

(1) ''Domestic violence'' means the infliction or threat of physical harm against past or present adult or adolescent female intimate partners, and shall include physical, sexual, and psychological abuse against the woman, and is a part of a pattern of assaultive, coercive, and controlling behaviors directed at achieving compliance from or control over, that woman.

(2) ''Shelter-based'' means an established system of services where battered women and their children may be provided safe or confidential emergency housing on a 24-hour basis, including, but not limited to, hotel or motel arrangements, haven, and safe houses.

(3) ''Emergency shelter'' means a confidential or safe location that provides emergency housing on a 24-hour basis for battered women and their children.

(b) The Maternal and Child Health Branch of the State Department of Health Services shall administer a comprehensive shelter-based services grant program to battered women's shelters pursuant to this section.

(c) The Maternal and Child Health Branch shall administer grants, awarded as the result of a request for application process, to battered women's shelters that propose to maintain shelters or services previously granted funding pursuant to this section, to expand existing services or create new services, and to establish new battered women's shelters to provide services, in any of the following four areas:

(1) Emergency shelter to women and their children escaping violent family situations.

(2) Transitional housing programs to help women and their children find housing and jobs so that they are not forced to choose between returning to a violent relationship or becoming homeless. The programs may offer up to 18 months of housing, case management, job training and placement, counseling, support groups, and classes in parenting and family budgeting.

(3) Legal and other types of advocacy and representation to help women and their children pursue the appropriate legal options.

(4) Other support services for battered women and their children.

(d) (1) The Maternal and Child Health Branch of the State Department of Health Services shall conduct a minimum of one site visit per grant term to each agency funded to provide shelter-based services to battered women and their children. The purpose of the site visit shall be a performance assessment of, and technical assistance for, each agency visited. The performance assessment shall include, but need not be limited to, a review of all of the following:

(A) Progress in meeting program goals and objectives.

(B) Agency organization and facilities.

(C) Personnel policies, files, and training.

(D) Recordkeeping, budgeting, and expenditures.

(E) Documentation, data collection, and client confidentiality.

(2) Subsequent to each site visit conducted under paragraph (1), the Maternal and Child Health Branch shall provide a written report to the agency summarizing the agency's performance, any deficiencies noted, and any corrective action needed.

(3) Where an agency receives funding from both the Maternal and Child Health Branch of the State Department of Health Services and the Domestic Violence Branch of the Office of Criminal Justice Planning during any grant cycle, the Maternal and Child Health Branch and the Domestic Violence Branch shall, to the extent feasible, coordinate agency site visits and share performance assessment data with the goal of improving efficiency, eliminating duplication, and reducing administrative costs.

(e) In implementing the grant program pursuant to this section, the State Department of Health Services shall consult with an advisory council that shall remain in existence until January 1, 2006. The council shall be composed of not to exceed 13 voting members and two nonvoting members appointed as follows:

(1) Seven members appointed by the Governor.

(2) Three members appointed by the Speaker of the Assembly.

(3) Three members appointed by the Senate Committee on Rules.

(4) Two nonvoting ex officio members who shall be Members of the Legislature, one appointed by the Speaker of the Assembly and one appointed by the Senate Committee on Rules. Any Member of the

Legislature appointed to the council shall meet with, and participate in the activities of, the council to the extent that participation is not incompatible with his or her position as a Member of the Legislature.

The membership of the council shall consist of domestic violence advocates, battered women service providers, and representatives of women's organizations, law enforcement, and other groups involved with domestic violence. At least one-half of the council membership shall consist of domestic violence advocates or battered women service providers from organizations such as the California Alliance Against Domestic Violence.

It is the intent of the Legislature that the council membership reflect the ethnic, racial, cultural, and geographic diversity of the state.

(f) The department shall collaborate closely with the council in the development of funding priorities, the framing of the Request for Proposals, and the solicitation of proposals.

(g) (1) The Maternal and Child Health Branch of the State Department of Health Services shall administer grants, awarded as the result of a request for application process, to agencies to conduct demonstration projects to serve battered women, including, but not limited to, creative and innovative service approaches, such as community response teams and pilot projects to develop new interventions emphasizing prevention and education, and other support projects identified by the advisory council.

(2) For purposes of this subdivision, "agency" means a state agency, a local government, a community-based organization, or a nonprofit organization.

(h) It is the intent of the Legislature that services funded by this program include services in underserved and ethnic and racial communities. Therefore, the Maternal and Child Health Branch of the State Department of Health Services shall do all of the following:

(1) Fund shelters pursuant to this section that reflect the ethnic, racial, economic, cultural, and geographic diversity of the state.

(2) Target geographic areas and ethnic and racial communities of the state whereby, based on a needs assessment, it is determined that no shelter-based services exist or that additional resources are necessary.

(i) The director may award additional grants to shelter-based agencies when it is determined that there exists a critical need for shelter or shelter-based services.

(j) As a condition of receiving funding pursuant to this section, battered women's shelters shall do all of the following:

(1) Provide matching funds or in-kind contributions equivalent to not less than 20 percent of the grant they would receive. The matching funds or in-kind contributions may come from other governmental or private sources.

(2) Ensure that appropriate staff and volunteers having client contact meet the definition of ''domestic violence counselor'' as specified in subdivision (a) of Section 1037.1 of the Evidence Code. The minimum training specified in paragraph (2) of subdivision (a) of Section 1037.1 of the Evidence Code shall be provided to those staff and volunteers who do not meet the requirements of paragraph (1) of subdivision (a) of Section 1037.1 of the Evidence Code.

SEC. 15.5. Section 124977 of the Health and Safety Code is amended to read:

124977. (a) It is the intent of the Legislature that, unless otherwise specified, the program carried out pursuant to this chapter be fully supported from fees collected for services provided by the program.

(b) (1) The department shall charge a fee to all payers for any tests or activities performed pursuant to this chapter. The amount of the fee shall be established by regulation and periodically adjusted by the director in order to meet the costs of this chapter. Notwithstanding any other provision of law, any fees charged for screening and followup services provided to Medi-Cal eligible persons, health care service plan enrollees, or persons covered by disability insurance policies, shall be paid in full directly to the Genetic Disease Testing Fund, subject to all terms and conditions of each enrollee's or insured's health care service plan or insurance coverage, whichever is applicable, including, but not limited to, copayments and deductibles applicable to these services, and only if these copayments, deductions, or limitations are disclosed to the subscriber or enrollee pursuant to the disclosure provisions of Section 1363.

(2) The department shall expeditiously undertake all steps necessary to implement the fee collection process, including personnel, contracts, and data processing, so as to initiate the fee collection process at the earliest opportunity. In no event shall a hospital be charged a fee for any test performed pursuant to this chapter on or after July 1, 2001.

(3) Paragraphs (1) and (2) shall be inoperative for services provided after June 30, 2002.

(4) Effective for services provided on and after July 1, 2002, the department shall charge a fee to the hospital of birth, or, for births not occurring in a hospital, to families of the newborn, for newborn screening and followup services. The hospital of birth and families of newborns born outside the hospital shall make payment in full to the Genetic Disease Testing Fund. The amount of the fee shall be established by regulation and periodically adjusted by the director in order to meet the costs of providing services under this chapter. The department shall not charge or bill Medi-Cal beneficiaries for services provided under this chapter.

(c) (1) The Legislature finds that timely implementation of changes in genetic screening programs and continuous maintenance of quality statewide services requires expeditious regulatory and administrative procedures, including policies and procedures developed pursuant to Sections 12101 and 12102 of the Public Contract Code or Division 25.2 (commencing with Section 38070) of the Health and Safety Code, to obtain the most cost-effective electronic data processing, hardware, software services, testing equipment, testing services, and followup contracts.

(2) The expenditure of funds from the Genetic Disease Testing Fund for these purposes shall not be subject to Section 12113.5 of, and Chapter 2 (commencing with Section 10290) of Part 2 of Division 2 of, the Public Contract Code. The department shall provide the Department of Finance with documentation that equipment and services have been obtained at the lowest cost consistent with technical requirements for a comprehensive high-quality program.

(d) Nothing in this section shall be construed to impose a new mandated benefit on health care service plans and health insurers.

SEC. 16. Section 125190 is added to the Health and Safety Code, to read:

125190. Notwithstanding any other provision of law, the department is considered to be the purchaser, but not the dispenser or distributor, of blood factor products under the Genetically Handicapped Person's Program. The department may receive manufacturers' discounts, rebates, or refunds based on the quantities purchased under the Genetically Handicapped Person's Program. The discounts, rebates, or refunds received pursuant to this section shall be separate from any agreements for discounts, rebates, or refunds negotiated pursuant to Section 14105.3 of the Welfare and Institutions Code or any other program.

SEC. 17. Section 127280.1 is added to the Health and Safety Code, to read:

127280.1. Notwithstanding any other provision of law, up to two hundred thousand dollars ($200,000) of the moneys collected pursuant to Section 127280 may be used in the 2002–03 fiscal year by the State Department of Health Services for data collection on, analysis of, and reporting on, maternal and perinatal outcomes, if funds are appropriated in the Budget Act.

SEC. 18. Section 12693.17 of the Insurance Code is amended to read:

12693.17. ''Family contribution sponsor'' means a person or entity that pays the family contribution on behalf of an applicant for any period of 12 consecutive months and, notwithstanding Section 12693.70, if the

sponsor is paying for the initial 12 months of eligibility, the payment for 12 months is made with the application.

SEC. 19. Section 12693.41 of the Insurance Code is amended to read:

12693.41. (a) Upon the effective date of coverage of a child eligible for the program, the board shall arrange for payment of providers who participate in the Child Health and Disability Prevention Program pursuant to Article 6 (commencing with Section 124025) of Chapter 3 of Part 2 of Division 106 of the Health and Safety Code, for well-child health assessments, immunizations, and initial treatment provided up to 90 days prior to the effective date of coverage.

(b) The board shall pay only for those services that are eligible for federal financial participation under Section 2105 of Title XXI of the Social Security Act and that are approved in the required state plan under that title, except as specified in Section 12693.76.

(c) (1) Child Health and Disability Prevention Program providers shall submit charges for the services under subdivision (a) on the form or in the format specified by the department for the Child Health and Disability Prevention Program. Those providers shall be reimbursed at the rates established for these services by the Child Health and Disability Prevention Program once coverage under the program is established.

(2) Those providers shall submit charges for services reimbursable under Medi-Cal on the form or in the format specified by the department for Medi-Cal. Those providers shall be reimbursed at the rates established for these services by Medi-Cal once coverage under Medi-Cal is established.

(d) (1) The board may use the state fiscal intermediary for medicaid to process the payments authorized in subdivision (a).

(2) The board shall be exempt from the requirements of Chapter 7 (commencing with Section 11700) of Division 3 of Title 2 of the Government Code and Chapter 3 (commencing with Section 12100) of Part 2 of Division 2 of the Public Contract Code as those requirements apply to the use of contractual claims processing services by the state fiscal intermediary.

(e) This section shall become inoperative on April 1, 2003, and, as of January 1, 2004, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2004, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 20. Section 12693.41 is added to the Insurance Code, to read:

12693.41. (a) The board shall consult and coordinate with the State Department of Health Services in implementing a preenrollment program into the Healthy Families Program or the Medi-Cal program pursuant to subdivision (b) of Section 14011.7 of the Welfare and Institutions Code. The board shall accept the followup application

provided for in Section 14011.7 of the Welfare and Institutions Code as an application for the Healthy Families Program. Preenrollment shall be administered by the State Department of Health Services to provide full-scope benefits pursuant to Medi-Cal program requirements, at no cost to the applicant.

(b) The board may use the state fiscal intermediary for medicaid to process the eligibility determinations and payments required pursuant to Section 14011.7 of the Welfare and Institutions Code.

(c) The board shall be exempt from the requirements of Chapter 7 (commencing with Section 11700) of Division 3 of Title 2 of the Government Code and Chapter 3 (commencing with Section 12100) of Part 2 of Division 2 of the Public Contract Code as those requirements apply to the use of processing services by the state fiscal intermediary.

(d) The board may adopt emergency regulations to implement preenrollment into the Healthy Families Program or the Medi-Cal program pursuant to Section 14011.7 of the Welfare and Institutions Code. The emergency regulations shall include, but not be limited to, regulations that implement any changes in rules relating to eligibility, enrollment, and disenrollment in the programs pursuant to Sections 12693.45 and 12693.70. The initial adoption of emergency regulations and one readoption of the initial regulations shall be deemed to be an emergency and necessary for the immediate preservation of the public peace, health and safety, and general welfare. Initial emergency regulations and the first readoption of those regulations shall be exempt from review by the Office of Administrative Law. The initial emergency regulations and one readoption of those regulations authorized by this section shall be submitted to the Office of Administrative Law for filing with the Secretary of State and publication in the California Code of Regulations and each shall remain in effect for no more than 180 days.

(e) This section shall become operative on April 1, 2003.

SEC. 21. Section 12693.43 of the Insurance Code is amended to read:

12693.43. (a) Applicants applying to the purchasing pool shall agree to pay family contributions, unless the applicant has a family contribution sponsor. Family contribution amounts consist of the following two components:

(1) The flat fees described in subdivision (b) or (d).

(2) Any amounts that are charged to the program by participating health, dental, and vision plans selected by the applicant that exceed the cost to the program of the highest cost Family Value Package in a given geographic area.

(b) In each geographic area, the board shall designate one or more Family Value Packages for which the required total family contribution is:

(1) Seven dollars ($7) per child with a maximum required contribution of fourteen dollars ($14) per month per family for applicants with annual household incomes up to and including 150 percent of the federal poverty level.

(2) Nine dollars ($9) per child with a maximum required contribution of twenty-seven dollars ($27) per month per family for applicants with annual household incomes greater than 150 percent and up to and including 200 percent of the federal poverty level.

(c) Combinations of health, dental, and vision plans that are more expensive to the program than the highest cost Family Value Package may be offered to and selected by applicants. However, the cost to the program of those combinations that exceeds the price to the program of the highest cost Family Value Package shall be paid by the applicant as part of the family contribution.

(d) The board shall provide a family contribution discount to those applicants who select the health plan in a geographic area that has been designated as the Community Provider Plan. The discount shall reduce the portion of the family contribution described in subdivision (b) to the following:

(1) A family contribution of four dollars ($4) per child with a maximum required contribution of eight dollars ($8) per month per family for applicants with annual household incomes up to and including 150 percent of the federal poverty level.

(2) Six dollars ($6) per child with a maximum required contribution of eighteen dollars ($18) per month per family for applicants with annual household incomes greater than 150 percent and up to and including 200 percent of the federal poverty level.

(e) Applicants, but not family contribution sponsors, who pay three months of required family contributions in advance shall receive the fourth consecutive month of coverage with no family contribution required.

(f) Applicants, but not family contribution sponsors, who pay the required family contributions by an approved means of electronic fund transfer shall receive a 25-percent discount from the required family contributions.

(g) It is the intent of the Legislature that the family contribution amounts described in this section comply with the premium cost sharing limits contained in Section 2103 of Title XXI of the Social Security Act. If the amounts described in subdivision (a) are not approved by the federal government, the board may adjust these amounts to the extent required to achieve approval of the state plan.

SEC. 22. Section 12693.45 of the Insurance Code is amended to read:

12693.45. (a) After two consecutive months of nonpayment of family contributions by an applicant, and a reasonable written notice period of no less than 30 days is provided to the applicant, subscribers or purchasing credit members may be disenrolled for an applicant's failure to pay family contributions. The board may impose or contract for collection actions to collect unpaid family contributions.

(b) Subject to any additional requirements of federal law, disenrollments shall be effective at the end of the second consecutive month of nonpayment.

SEC. 23. Section 12693.70 of the Insurance Code is amended to read:

12693.70. To be eligible to participate in the program, an applicant shall meet all of the following requirements:

(a) Be an applicant applying on behalf of an eligible child, which means a child who is all of the following:

(1) Less than 19 years of age. An application may be made on behalf of a child not yet born up to three months prior to the expected date of delivery. Coverage shall begin as soon as administratively feasible, as determined by the board, after the board receives notification of the birth. However, no child less than 12 months of age shall be eligible for coverage until 90 days after the enactment of the Budget Act of 1999.

(2) Not eligible for no-cost full-scope Medi-Cal or Medicare coverage at the time of application.

(3) In compliance with Sections 12693.71 and 12693.72.

(4) A child who meets citizenship and immigration status requirements that are applicable to persons participating in the program established by Title XXI of the Social Security Act, except as specified in Section 12693.76.

(5) A resident of the State of California pursuant to Section 244 of the Government Code; or, if not a resident pursuant to Section 244 of the Government Code, is physically present in California and entered the state with a job commitment or to seek employment, whether or not employed at the time of application to or after acceptance in, the program.

(6) (A) In a family with an annual or monthly household income equal to or less than 200 percent of the federal poverty level.

(B) All income over 200 percent of the federal poverty level but less than or equal to 250 percent of the federal poverty level shall be disregarded in calculating annual or monthly household income.

(C) In a family with an annual or monthly household income greater than 250 percent of the federal poverty level, any income deduction that is applicable to a child under Medi-Cal shall be applied in determining the annual or monthly household income. If the income deductions

reduce the annual or monthly household income to 250 percent or less of the federal poverty level, subparagraph (B) shall be applied.

(b) If the applicant is applying for the purchasing pool, and does not have a family contribution sponsor the applicant shall pay the first month's family contribution and agree to remain in the program for six months, unless other coverage is obtained and proof of the coverage is provided to the program.

(c) An applicant shall enroll all of the applicant's eligible children in the program.

(d) In filing documentation to meet program eligibility requirements, if the applicant's income documentation cannot be provided, as defined in regulations promulgated by the board, the applicant's signed statement as to the value or amount of income shall be deemed to constitute verification.

(e) An applicant shall pay in full any family contributions owed in arrears for any health, dental, or vision coverage provided by the program within the prior 12 months.

SEC. 24. Section 12693.981 of the Insurance Code is amended to read:

12693.981. (a) (1) The Healthy Families-to-Medi-Cal Bridge Benefits Program is hereby established to provide any person enrolled for coverage under this part who meets the criteria set forth in subdivision (b) with a two calendar-month period of health care benefits in order to provide the person with an opportunity to apply for Medi-Cal.

(2) The Healthy Families-to-Medi-Cal Bridge Benefits Program shall be administered by the board.

(b) (1) Any person who meets all of the following requirements shall be eligible for two additional calendar months of Healthy Families benefits:

(A) He or she has been receiving, but is no longer eligible for, benefits under the program.

(B) He or she appears to be income eligible for full-scope Medi-Cal benefits without a share of cost.

(2) The two additional calendar months of benefits under this chapter shall begin on the first day of the month following the last day of the person's eligibility for benefits under the program.

(c) The two-calendar-month period of Healthy Families benefits provided under this chapter shall be identical to the scope of benefits that the person was receiving under the program.

(d) Nothing in this section shall be construed to provide Healthy Families benefits for more than a two calendar-month period under any circumstances, including the failure to apply for benefits under the Medi-Cal program or the failure to be made aware of the availability of

the Medi-Cal program unless the circumstances described in subdivision (b) reoccur.

(e) This section shall become inoperative if an unappealable court decision or judgment determines that any of the following apply:

(1) The provisions of this section are unconstitutional under the United States Constitution or the California Constitution.

(2) The provisions of this section do not comply with the State Children's Health Insurance Program, as set forth in Title XXI of the federal Social Security Act.

(3) The provisions of this section require that the health care benefits provided pursuant to this section are required to be furnished for more than two calendar months.

SEC. 25. Section 4094.2 of the Welfare and Institutions Code is amended to read:

4094.2. (a) For the purpose of establishing payment rates for community treatment facility programs, the private nonprofit agencies selected to operate these programs shall prepare a budget that covers the total costs of providing residential care and supervision and mental health services for their proposed programs. These costs shall include categories that are allowable under California's Foster Care program and existing programs for mental health services. They shall not include educational, nonmental health medical, and dental costs.

(b) Each agency operating a community treatment facility program shall negotiate a final budget with the local mental health department in the county in which its facility is located (the host county) and other local agencies as appropriate. This budget agreement shall specify the types and level of care and services to be provided by the community treatment facility program and a payment rate that fully covers the costs included in the negotiated budget. All counties that place children in a community treatment facility program shall make payments using the budget agreement negotiated by the community treatment facility provider and the host county.

(c) A foster care rate shall be established for each community treatment facility program by the State Department of Social Services. These rates shall be established using the existing foster care ratesetting system for group homes, with modifications designed as necessary. It is anticipated that all community treatment facility programs will offer the level of care and services required to receive the highest foster care rate provided for under the current group home ratesetting system.

(d) For the 2001–02 fiscal year and the 2002–03 fiscal year, community treatment facility programs shall also be paid a community treatment facility supplemental rate of up to two thousand five hundred dollars ($2,500) per child per month on behalf of children eligible under the foster care program and children placed out of home pursuant to an

individualized education program developed under Section 7572.5 of the Government Code. Subject to the availability of funds, the supplemental rate shall be shared by the state and the counties. Counties shall be responsible for paying a county share of cost equal to 60 percent of the community treatment rate for children placed by counties in community treatment facilities and the state shall be responsible for 40 percent of the community treatment facility supplemental rate. The community treatment facility supplemental rate is intended to supplement, and not to supplant, the payments for which children placed in community treatment facilities are eligible to receive under the foster care program and the existing programs for mental health services.

(e) For initial ratesetting purposes for community treatment facility funding, the cost of mental health services shall be determined by deducting the foster care rate and the community treatment facility supplemental rate from the total allowable cost of the community treatment facility program. Payments to certified providers for mental health services shall be based on eligible services provided to children who are Medi-Cal beneficiaries, up to the statewide maximum allowances for these services.

(f) Although there is statutory authorization for up to 400 community treatment facility beds statewide, it is anticipated that there will be a phased-in implementation of community treatment facilities, and that the average monthly community treatment facility caseload during the 2001–02 fiscal year will be approximately 100 and during the 2002–03 fiscal year will be approximately 140.

(g) The department shall provide the community treatment facility supplemental rates to the counties for advanced payment to the community treatment facility providers in the same manner as the regular foster care payment and within the same required payment time limits.

(h) In order to facilitate a study of the costs of community treatment facilities, licensed community treatment facilities shall provide all documents regarding facility operations, treatment, and placements requested by the department.

(i) It is the intent of the Legislature that the department and the State Department of Social Services work to maximize federal financial participation in funding for children placed in community treatment facilities through funds available pursuant to Titles IV-E and XIX of the federal Social Security Act (Title 42 U.S.C. Sec. 670 and following and Sec. 1396 and following) and other appropriate federal programs.

(j) The department and the State Department of Social Services may adopt emergency regulations necessary to implement joint protocols for the oversight of community treatment facilities, to modify existing licensing regulations governing reporting requirements and other

procedural and administrative mandates to take into account the seriousness and frequency of behaviors that are likely to be exhibited by the seriously emotionally disturbed children placed in community treatment facility programs, to modify the existing foster care ratesetting regulations, and to pay the community treatment facility supplemental rate. The adoption of these regulations shall be deemed to be an emergency and necessary for the immediate preservation of the public peace, health and safety, and general welfare. The regulations shall become effective immediately upon filing with the Secretary of State. The regulations shall not remain in effect more than 180 days unless the adopting agency complies with all the provisions of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, as required by subdivision (e) of Section 11346.1 of the Government Code.

SEC. 26. Section 4380 of the Welfare and Institutions Code is amended to read:

4380. The Legislature authorizes the director, in consultation with the Secretary of Child Development and Education and the Superintendent of Public Instruction, to award matching grants to local educational agencies to pay the state share of the costs of providing programs that provide school-based early mental health intervention and prevention services to eligible pupils at schoolsites of eligible pupils, as follows:

(a) The director shall award matching grants pursuant to this chapter to local educational agencies throughout the state.

(b) Matching grants awarded under this part shall be awarded for a period of not more than three years and no single schoolsite shall be awarded more than one grant, except for a schoolsite that received a grant prior to July 1, 1992.

(c) The director shall pay to each local educational agency having an application approved pursuant to requirements in this part the state share of the cost of the activities described in the application.

(d) Commencing July 1, 1993, the state share of matching grants shall be a maximum of 50 percent in each of the three years.

(e) Commencing July 1, 1993, the local share of matching grants shall be at least 50 percent, from a combination of school district and cooperating entity funds.

(f) The local share of the matching grant may be in cash or payment in-kind.

(g) Priority shall be given to those applicants that demonstrate the following:

(1) The local educational agency will serve the greatest number of eligible pupils from low-income families.

(2) The local educational agency will provide a strong parental involvement component.

(3) The local educational agency will provide supportive services with one or more cooperating entities.

(4) The local educational agency will provide services at a low cost per child served in the project.

(5) The local educational agency will provide programs and services that are based on adoption or modification, or both, of existing programs that have been shown to be effective. No more than 20 percent of the grants awarded by the director may be utilized for new models.

(6) The local educational agency will provide services to children who are in out-of-home placement or who are at risk of being in out-of-home placement.

(h) Eligible supportive services may include the following:

(1) Individual and group intervention and prevention services.

(2) Parent involvement through conferences or training, or both.

(3) Teacher and staff conferences and training related to meeting project goals.

(4) Referral to outside resources when eligible pupils require additional services.

(5) Use of paraprofessional staff, who are trained and supervised by credentialed school psychologists, school counselors, or school social workers, to meet with pupils on a short-term weekly basis, in a one-on-one setting as in the Primary Intervention Program established pursuant to Chapter 4 (commencing with Section 4343) of Part 3. A minimum of 80 percent of the grants awarded by the director shall include the basic components of the Primary Intervention Program.

(6) Any other service or activity that will improve the mental health of eligible pupils.

Prior to participation by an eligible pupil in either individual or group services, consent of a parent or guardian shall be obtained.

(i) Each local educational agency seeking a grant under this chapter shall submit an application to the director at the time, in a manner, and accompanied by any information the director may reasonably require.

(j) Each matching grant application submitted shall include all of the following:

(1) Documentation of need for the school-based early mental health intervention and prevention services.

(2) A description of the school-based early mental health intervention and prevention services expected to be provided at the schoolsite.

(3) A statement of program goals.

(4) A list of cooperating entities that will participate in the provision of services. A letter from each cooperating entity confirming its participation in the provision of services shall be included with the list.

At least one letter shall be from a cooperating entity confirming that it will agree to screen referrals of low-income children the program has determined may be in need of mental health treatment services and that, if the cooperating entity determines that the child is in need of those services and if the cooperating entity determines that according to its priority process the child is eligible to be served by it, the cooperating entity will agree to provide those mental health treatment services.

(5) A detailed budget and budget narrative.

(6) A description of the proposed plan for parent involvement in the program.

(7) A description of the population anticipated to be served, including number of pupils to be served and socioeconomic indicators of sites to receive funds.

(8) A description of the matching funds from a combination of local education agencies and cooperating entities.

(9) A plan describing how the proposed school-based early mental health intervention and prevention services program will be continued after the matching grant has expired.

(10) Assurance that grants would supplement and not supplant existing local resources provided for early mental health intervention and prevention services.

(11) A description of an evaluation plan that includes quantitative and qualitative measures of school and pupil characteristics, and a comparison of children's adjustment to school.

(k) Matching grants awarded pursuant to this article may be used for salaries of staff responsible for implementing the school-based early mental health intervention and prevention services program, equipment and supplies, training, and insurance.

(*l*) Salaries of administrative staff and other administrative costs associated with providing services shall be limited to 5 percent of the state share of assistance provided under this section.

(m) No more than 10 percent of each matching grant awarded pursuant to this article may be used for matching grant evaluation.

(n) No more than 10 percent of the moneys allocated to the director pursuant to this chapter may be utilized for program administration and evaluation.

Program administration shall include both state staff and field staff who are familiar with and have successfully implemented school-based early mental health intervention and prevention services. Field staff may be contracted with by local school districts or community mental health programs. Field staff shall provide support in the timely and effective implementation of school-based early mental health intervention and prevention services. Reviews of each project shall be conducted at least once during the first year of funding.

(o) Subject to the approval of the director, at the end of the fiscal year, a school district may apply unexpended funds to the budget for the subsequent funding year.

(p) Contracts for the program and administration, or ancillary services in support of the program, shall be exempt from the requirements of the Public Contract Code and the State Administrative Manual, and from approval by the Department of General Services.

SEC. 27. Section 4418.2 is added to the Welfare and Institutions Code, to read:

4418.2. The department shall support, utilizing regional resource development projects, the activities specified in Sections 4418.25, 4418.3, and 4418.7.

SEC. 28. Section 4418.25 is added to the Welfare and Institutions Code, to read:

4418.25. (a) The department shall establish policies and procedures for the development of an annual community placement plan by regional centers. The community placement plan shall be based upon an individual program plan process as referred to in subdivision (a) of Section 4418.3 and shall be linked to the development of the annual state budget. The department's policies shall address statewide priorities, plan requirements, and the statutory roles of regional centers, developmental centers, and regional resource development projects in the process of assessing consumers for community living and in the development of community resources.

(b) The community placement plan shall provide for dedicated funding for comprehensive assessments of selected developmental center residents, for identified costs of moving selected individuals from developmental centers to the community, and for deflection of selected individuals from developmental center admission. The plans shall, where appropriate, include budget requests for regional center operations, assessments, resource development, and ongoing placement costs. These budget requests are intended to provide supplemental funding to regional centers. The plan is not intended to limit the department's or regional centers' responsibility to otherwise conduct assessments and individualized program planning, and to provide needed services and supports in the least restrictive, most integrated setting in accord with the Lanterman Developmental Disabilities Services Act (Division 4.5 (commencing with Section 4500)).

(c) The department shall review, negotiate, and approve regional center community placement plans for feasibility and reasonableness, including recognition of each regional centers' current developmental center population and their corresponding placement level, as well as each regional centers' need to develop new and innovative service models. The department shall hold regional centers accountable for the

development and implementation of their approved plans. The regional centers shall report, as required by the department, on the outcomes of their plans. The department shall make aggregate performance data for each regional center available, upon request, as well as data on admissions to, and placements from, each developmental center.

(d) Funds allocated by the department to a regional center for a community placement plan developed under this section shall be controlled through the regional center contract to ensure that the funds are expended for the purposes allocated. Funds allocated for community placement plans that are not used for that purpose may be transferred to Item 4300-003-0001 for expenditure in the state developmental centers if their population exceeds the budgeted level. Any unspent funds shall revert to the General Fund.

SEC. 29. Section 4418.3 of the Welfare and Institutions Code is amended to read:

4418.3. (a) It is the intent of the Legislature to ensure that the transition process from a developmental center to a community living arrangement is based upon the individual's needs, developed through the individual program plan process, and ensures that needed services and supports will be in place at the time the individual moves. It is further the intent of the Legislature that regional centers, developmental centers, and regional resource development projects coordinate with each other for the benefit of their activities in assessment, in the development of individual program plans, and in planning, transition, and deflection, and for the benefit of consumers.

(b) As individuals are identified for possible movement to the community, an individual planning meeting shall be initiated by the developmental center, which shall notify the planning team, pursuant to subdivision (j) of Section 4512, and the regional resource development project of the meeting. The regional resource development project shall make services available to the developmental center and the regional center, including, but not limited to, consultations with the planning teams and the identification of services and supports necessary for the consumer to succeed in community living.

(c) The development of the individual program plan shall be consistent with Sections 4646 and 4646.5. For the purpose of this section, the planning team shall include developmental center staff knowledgeable about the service and support needs of the consumer.

(d) Regional resource development project services may include providing information in an understandable form to consumers and, where appropriate, their families, conservators, legal guardians, or authorized representatives, that will assist them in making decisions about community living and services and supports. This information may include affording the consumer the opportunity to visit a variety of

community living arrangements that could meet his or her needs. If the visits are not feasible, as determined by the planning team, a family member or other representative of the consumer may conduct the visits. Regional resource development projects may be requested to facilitate these visits. The availability of this service shall be made known by the planning team to consumers and, where appropriate, their families, conservators, legal guardians, or authorized representative.

(e) Once the individual program plan is completed and providers of services and supports are identified and agreed to, pursuant to subdivision (b) of Section 4646.5, and no less than 15 days prior to the move, unless otherwise ordered by a court, a transition conference, which may be facilitated by a regional resource development project, shall be held. Participants in the transition conference shall include, but not be limited to, the consumer, where appropriate the consumer's parents, legal guardian, conservator, or authorized representative, a regional center representative, a developmental center representative, and a representative of each provider of primary services and supports identified in the individual program plan. This meeting may take place in the catchment area to which the consumer is moving. If necessary, conferees may participate by telephone or video conference. The purpose of this conference shall be to ensure a smooth transition from the developmental center to the community.

(f) The department, through the appropriate regional resource development project, shall provide, in cooperation with regional centers and developmental centers, followup services to help ensure a smooth transition to the community. Followup services shall include, but shall not limited to, all of the following:

(1) Regularly scheduled as well as on an as-needed basis, contacts and visits with consumers and service providers during the 12 months following the consumers movement date.

(2) Participation in the development of an individual program plan in accordance with Sections 4646 and 4646.5.

(3) Identification of issues that need resolution.

(4) Arrangement for the provision of developmental center services, including, but not limited to, medication review, crisis services, and behavioral consultation.

(g) To ascertain that the individual program plan is being implemented, that planned services are being provided, and that the consumer and, where appropriate the consumer's parents, legal guardian, or conservator, are satisfied with the community living arrangement, the regional center shall schedule face-to-face reviews no less than once every 30 days for the first 90 days. Following the first 90 days, and following notification to the department, the regional center

may conduct these reviews less often as specified in the individual program plan.

(h) The regional center and the regional resource development project shall coordinate their followup reviews required pursuant to subdivisions (f) and (g) and shall share with each other information obtained during the course of the followup visits.

SEC. 30. Section 4418.7 of the Welfare and Institutions Code is amended to read:

4418.7. (a) If the regional center determines, or is informed by the consumer's parents, legal guardian, conservator, or authorized representative that the community placement of a consumer is at risk of failing, and that admittance to a state developmental center is a likelihood, the regional center shall immediately notify the appropriate regional resource development project, the consumer, and the consumer's parents, legal guardian, or conservator.

(b) In these cases, the regional resource development project shall immediately arrange for an assessment of the situation, including, visiting the consumer, if appropriate, determining barriers to successful integration, and recommending the most appropriate means necessary to assist the consumer to remain in the community. If, based on the assessment, the regional resource development project determines that additional or different services and supports are necessary, the department shall ensure that the regional center provides those services and supports on an emergency basis. An individual program plan meeting, including the regional resource development project's representative, shall be convened as soon as possible to review the emergency services and supports and determine the consumer's ongoing needs for services and supports. The regional resource development project shall follow up with the regional center as to the success of the recommended interventions until the consumer's living arrangement is stable.

(c) If the regional resource development project, in consultation with the regional center, the consumer, and the consumer's parents, legal guardian, or conservator, when appropriate, determines that admittance to a state developmental center is necessary to prevent a substantial risk to the individual's health and safety, the regional resource development project shall immediately facilitate that admission.

(d) The department shall collect data on the outcomes of efforts to assist at-risk consumers to remain in the community. The department shall make aggregate data on the implementation of the requirements of this section available, upon request.

SEC. 30.5. Section 4631.5 is added to the Welfare and Institutions Code, to read:

4631.5. (a) The Legislature finds and declares both of the following:

(1) The state is facing an unprecedented fiscal crisis that will require an unallocated reduction in the 2002–03 fiscal year for regional centers' purchase of service budgets of fifty-two million dollars ($52,000,000).

(2) Even when the state faces an unprecedented fiscal crisis, the services and supports set forth in the Lanterman Developmental Disabilities Services Act (Division 4.5 (commencing with Section 4500)) shall continue to be provided to individuals with developmental disabilities in accordance with state and federal statutes, regulations, and case law, including Association for Retarded Citizens v. Department of Developmental Services (1985) 38 Cal.3d 384.

(b) It is the intent of the Legislature that actions taken pursuant to this section shall not eliminate an individual's eligibility, adversely affect an individual's health and safety, or interfere with an individual's rights as described in Section 4502.

(c) In order to ensure that services to eligible consumers are available throughout the fiscal year, regional centers shall administer their contracts within the level of funding appropriated by the annual Budget Act.

(d) Within 30 days of the enactment of the annual Budget Act, and after consultation with stakeholder organizations, the department shall determine the amount of unallocated reduction that each regional center shall make in its purchase-of-service budget and shall provide each regional center with guidelines, technical assistance, and a variety of options for reducing operations and purchase of service costs.

(e) Within 60 days of the enactment of the annual Budget Act, each regional center shall develop and submit a plan to the department describing in detail how it intends to absorb the unallocated reduction and achieve savings necessary to provide services to eligible consumers throughout the fiscal year within the limitations of the funds allocated. Prior to adopting the plan, each regional center shall hold a public hearing in order to receive comment on the plan. The regional center shall provide notice to the community at least 10 days in advance of the public hearing. The regional center shall summarize and respond to the public testimony in its plan.

(f) A regional center shall implement components of its plans upon approval of the department. Within 30 days of receipt of the plan, the department shall review and approve, or require modification of, portions of the regional center's plan.

(g) This section 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. 31. 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 1 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 1 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.

(j) (1) Any contract between the department and a regional center entered into on and after January 1, 2003, shall require that all employment contracts entered into with regional center staff or contractors be available to the public for review, upon request. For purposes of this subdivision, an employment contract or portion thereof may not be deemed confidential nor unavailable for public review.

(2) Notwithstanding paragraph (1), the social security number of the contracting party may not be disclosed.

(3) The term of the employment contract between the regional center and an employee or contractor shall not exceed the term of the state's contract with the regional center.

SEC. 32. Section 4643 of the Welfare and Institutions Code is amended to read:

4643. (a) If assessment is needed, prior to July 1, 2003, the assessment shall be performed within 120 days following initial intake. Assessment shall be performed as soon as possible and in no event more than 60 days following initial intake where any delay would expose the client to unnecessary risk to his or her health and safety or to significant

further delay in mental or physical development, or the client would be at imminent risk of placement in a more restrictive environment. Assessment may include collection and review of available historical diagnostic data, provision or procurement of necessary tests and evaluations, and summarization of developmental levels and service needs and is conditional upon receipt of the release of information specified in subdivision (b). On and after July 1, 2003, the assessment shall be performed within 60 days following intake and if unusual circumstances prevent the completion of assessment within 60 days following intake, this assessment period may be extended by one 30-day period with the advance written approval of the department.

(b) In determining if an individual meets the definition of developmental disability contained in subdivision (a) of Section 4512, the regional center may consider evaluations and tests, including, but not limited to, intelligence tests, adaptive functioning tests, neurological and neuropsychological tests, diagnostic tests performed by a physician, psychiatric tests, and other tests or evaluations that have been performed by, and are available from, other sources.

SEC. 33. Section 4646.5 of the Welfare and Institutions Code is amended to read:

4646.5. (a) The planning process for the individual program plan described in Section 4646 shall include all of the following:

(1) Gathering information and conducting assessments to determine the life goals, capabilities and strengths, preferences, barriers, and concerns or problems of the person with developmental disabilities. For children with developmental disabilities, this process should include a review of the strengths, preferences, and needs of the child and the family unit as a whole. Assessments shall be conducted by qualified individuals and performed in natural environments whenever possible. Information shall be taken from the consumer, his or her parents and other family members, his or her friends, advocates, providers of services and supports, and other agencies. The assessment process shall reflect awareness of, and sensitivity to, the lifestyle and cultural background of the consumer and the family.

(2) A statement of goals, based on the needs, preferences, and life choices of the individual with developmental disabilities, and a statement of specific, time-limited objectives for implementing the person's goals and addressing his or her needs. These objectives shall be stated in terms that allow measurement of progress or monitoring of service delivery. These goals and objectives should maximize opportunities for the consumer to develop relationships, be part of community life in the areas of community participation, housing, work, school, and leisure, increase control over his or her life, acquire

increasingly positive roles in community life, and develop competencies to help accomplish these goals.

(3) When developing individual program plans for children, regional centers shall be guided by the principles, process, and services and support parameters set forth in Section 4685.

(4) A schedule of the type and amount of services and supports to be purchased by the regional center or obtained from generic agencies or other resources in order to achieve the individual program plan goals and objectives, and identification of the provider or providers of service responsible for attaining each objective, including, but not limited to, vendors, contracted providers, generic service agencies, and natural supports. The plan shall specify the approximate scheduled start date for services and supports and shall contain timelines for actions necessary to begin services and supports, including generic services.

(5) When agreed to by the consumer, the parents or legally appointed guardian of a minor consumer, or the legally appointed conservator of an adult consumer or the authorized representative, including those appointed pursuant to Section 4590 and subdivision (e) of Section 4705, a review of the general health status of the adult or child including a medical, dental, and mental health needs shall be conducted. This review shall include a discussion of current medications, any observed side effects, and the date of last review of the medication. Service providers shall cooperate with the planning team to provide any information necessary to complete the health status review. If any concerns are noted during the review, referrals shall be made to regional center clinicians or to the consumer's physician, as appropriate. Documentation of health status and referrals shall be made in the consumer's record by the service coordinator.

(6) A schedule of regular periodic review and reevaluation to ascertain that planned services have been provided, that objectives have been fulfilled within the times specified, and that consumers and families are satisfied with the individual program plan and its implementation.

(b) For all active cases, individual program plans shall be reviewed and modified by the planning team, through the process described in Section 4646, as necessary, in response to the person's achievement or changing needs, and no less often than once every three years. If the consumer or, where appropriate, the consumer's parents, legal guardian, or conservator requests an individual program plan review, the individual program shall be reviewed within 30 days after the request is submitted.

(c) (1) The department, with the participation of representatives of a statewide consumer organization, the Association of Regional Center Agencies, an organized labor organization representing service

coordination staff, and the Organization of Area Boards shall prepare training material and a standard format and instructions for the preparation of individual program plans, which embodies an approach centered on the person and family.

(2) Each regional center shall use the training materials and format prepared by the department pursuant to paragraph (1).

(3) The department shall biennially review a random sample of individual program plans at each regional center to assure that these plans are being developed and modified in compliance with Section 4646 and this section.

SEC. 34. Section 4781.5 is added to the Welfare and Institutions Code, to read:

4781.5. For the 2002–03 fiscal year only, a regional center may not expend any purchase of service funds for the startup of any new program unless the expenditure is necessary to protect the consumer's health or safety or because of other extraordinary circumstances, and the department has granted prior written authorization for the expenditure. This provision shall not apply to any of the following:

(a) The purchase of services funds allocated as part of the department's community placement plan process.

(b) Expenditures for the startup of new programs made pursuant to a contract entered into before July 1, 2002.

SEC. 34.5. Section 4847 of the Welfare and Institutions Code is repealed.

SEC. 35. Section 5600.8 of the Welfare and Institutions Code is amended to read:

5600.8. (a) The department may allocate the funds appropriated in Schedule (2) of Item 4440-101-0001 of the annual Budget Act, to county mental health programs that meet programmatic goals and model adult system of care programs to the satisfaction of the department. The department shall audit and monitor the use of these funds to ensure they are used solely in support of Adult System of Care programming. If county programs receiving adult system of care funding do not comply with program and audit requirements determined by the department, funding shall be redistributed to other counties to implement, expand, or model adult systems of care.

(b) The department may allocate the funds appropriated in Schedule (3) of Item 4440-101-0001 of the annual Budget Act, to county mental health programs for Children's System of Care programming. These funds shall be utilized by counties only in support of a mental health system serving seriously emotionally disturbed children, in accordance with the principles and program requirements associated with the system of care model, as set forth in Part 4 (commencing with Section 5850). The department shall audit and monitor the use of these funds to ensure

they are used solely in support of the Children's System of Care program. If county programs receiving children's system of care funding do not comply with program and audit requirements determined by the department, funds shall be redistributed to other counties to implement, expand, or model children's system of care programming.

SEC. 36. Section 5767 is added to the Welfare and Institutions Code, to read:

5767. The department, in consultation with a statewide organization representing county mental health services, shall strengthen and ensure statewide application of managed care principles, building on existing county systems, to manage the Early Periodic Screening Diagnosis and Treatment Program benefit while ensuring access to eligible Medi-Cal recipients.

SEC. 37. Section 5869 of the Welfare and Institutions Code is amended to read:

5869. The department shall provide participating counties with all of the following:

(a) Applications for funding guidelines and format, and coordination and oversight of the selection process as described in Article 4 (commencing with Section 5857).

(b) Contracts with each state funded county specifying the approved budget, performance outcomes, and a scope of work plan for each year of participation in the children's system of care program.

(c) Technical assistance related to system evaluation.

SEC. 38. Section 5881 of the Welfare and Institutions Code is amended to read:

5881. (a) Evaluation shall be conducted by both participating county evaluation staff and, subject to the availability of funds, by the department.

(b) Evaluation at both levels shall do all of the following:

(1) Ensure that county level systems of care are serving the targeted population.

(2) Ensure that the timely performance data related to client outcome and cost avoidance is collected, analyzed, and reported.

(3) Ensure that system of care components are implemented as intended.

(4) Provide information documenting needs for future planning.

SEC. 39. Section 5882 of the Welfare and Institutions Code is amended to read:

5882. (a) Participating counties shall assign sufficient resources to performance evaluation to enable the county to fulfill all evaluation responsibilities specified in the contract with the department.

(b) Counties shall cooperate with the department regarding the development of uniform measures of performance.

SEC. 40. Section 5883 of the Welfare and Institutions Code is amended to read:

5883. (a) The department shall facilitate improved access to relevant client and financial data from all state agencies, including, but not limited to, the State Department of Social Services, the State Department of Education, the State Department of Health Services, the State Department of Mental Health, the Department of the Youth Authority, and the Department of Finance.

(b) The State Department of Mental Health shall expand the funding allocated to the contract for independent evaluation, as necessary to accommodate the increase in workload created by the addition of new sites.

(c) Subject to the availability of funds, the department shall do all of the following:

(1) Develop uniform data collection and reporting measures applicable to all participating counties.

(2) Collect, analyze, and report performance outcome data for participating counties as a group in comparison to state averages.

(3) Offer technical assistance to participating counties related to data collection, analysis, and reporting.

SEC. 41. Section 14000.03 is added to the Welfare and Institutions Code, to read:

14000.03. (a) The Legislature finds and declares that Section 1396a(a)(11)(A) of Title 42 of the United States Code provides that California's state plan for medical assistance under the Medicaid program must ''provide for entering into cooperative arrangements with the State agencies responsible for administering or supervising the administration of health services and vocational rehabilitation services in the State looking toward maximum utilization of such services in the provision of medical assistance under the plan.''

(b) In furtherance of Section 1396a(a)(11)(A) of Title 42 of the United States Code and Section 7560 of the Government Code, it is the intent of the Legislature to maximize the amount of federal and state funds continually available under agreements identified in Section 1396a(a)(11)(A) of Title 42 of the United States Code and entered into by the State Department of Health Services by making later-appropriated and budgeted funds immediately encumbered and available for expenditure under agreements by operation of law.

(c) Notwithstanding any other provision of law, upon additional funds being appropriated and budgeted for the support of the services identified within the scope of work of an agreement of the type identified in Section 1396a (a)(11)(A) of Title 42 of the United States Code and previously entered into by the State Department of Health Services, the

amount of the encumbrance in such an agreement shall be amended, by operation of law, to reflect the newly appropriated and budgeted funds.

(d) Notwithstanding any other provision of law, once an agreement of the type identified in Section 1396a (a)(11)(A) of Title 42 of the United States Code is entered into by the State Department of Health Services, the agreement shall continue in effect indefinitely and need not be amended unless the State Department of Health Services changes the scope of work to be provided under the agreement.

SEC. 42. Section 14000.5 is added to the Welfare and Institutions Code, to read:

14000.5. On a regional pilot project basis, to the extent authorized by law, the director may enter into contracts with one or more nonprofit organizations to perform the functions of the department's Office of the Ombudsman. These activities may include outreach, community education and training about health care consumer rights and responsibilities, including the production and distribution of consumer-oriented material, individual consumer assistance, including counseling, advice, assistance, education, advocacy, and referral as appropriate, establishing and operating a database to analyze the nature of the inquiries and requests for assistance, and training of department or county staff. These services may be made available to any person who may be eligible for or is receiving benefits under this chapter. Funds appropriated in the annual Budget Act for the support of the Office of the Ombudsman may be allocated for this purpose.

SEC. 43. Section 14005.41 of the Welfare and Institutions Code is amended to read:

14005.41. (a) Notwithstanding any other provision of law, the department shall deem to have met the income documentation 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 through a federally funded program using the National School Lunch application 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, 2003, notwithstanding any other provision of law, each county shall participate in a statewide pilot project to determine Medi-Cal program eligibility for 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, which may be the supplemented application, described in subdivision (i). Counties shall notify the parent or guardian of the results of the eligibility determination.

(B) Effective July 1, 2003, 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, which may be the supplemented application, described in subdivision (i). If the county determines from the supplemented application described in subdivision (i) that the child meets the 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 child is 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 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 information or 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, 2003, 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, 2003.

(h) (1) Notwithstanding subdivision (g), not later than March 1, 2003, 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 section.

(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, if supplemented as needed by simplified forms and 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.

(*l*) In order to expedite health coverage for children who have been determined eligible for free meals under the National School Lunch Program, the department, at its discretion, may choose to implement this section in whole or in part by exercising the option described in Section 1396r-1a of Title 42 of the United States Code to allow information provided on the National School Lunch Program application referred to, and supplemented as described, in paragraph (1) of subdivision (a) of Section 49557.2 of the Education Code to serve as a basis for a preliminary eligibility determination by a qualified entity designated by the department.

SEC. 44. Section 14011.6 of the Welfare and Institutions Code is amended to read:

14011.6. (a) To the extent federal financial participation is available, the department shall exercise the option provided in Section

1920a of the federal Social Security Act (42 U.S.C. Sec. 1396r-1a) to implement a program for accelerated enrollment of children.

(b) The department shall designate the single point of entry, as defined in subdivision (c), as the qualified entity for determining eligibility under this section.

(c) For purposes of this section, ''single point of entry'' means the centralized processing entity that accepts and screens applications for benefits under the Medi-Cal Program for the purpose of forwarding them to the appropriate counties.

(d) The department shall implement this section only if, and to the extent that, federal financial participation is available.

(e) The department shall seek federal approval of any state plan amendments necessary to implement this section. When federal approval of the state plan amendment or amendments is received, the department shall commence implementation of this section on the first day of the second month following the month in which federal approval of the state plan amendment or amendments is received, or on July 1, 2002, whichever is later.

(f) Notwithstanding any other provision of law, the department shall implement this section only if, and to the extent that, the federal State Children's Health Insurance Program waiver described in Section 12693.755 of the Insurance Code is approved by the federal government.

(g) Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, the department shall, without taking any regulatory action, implement this section by means of all-county letters. 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.

(h) Upon the receipt of an application for a child who has coverage pursuant to the accelerated enrollment program, a county shall determine whether the child is eligible for Medi-Cal benefits. If the county determines that the child does not meet the eligibility requirements for participation in the Medi-Cal program, the county shall report this finding to the Medical Eligibility Data System so that accelerated enrollment coverage benefits are discontinued. The information to be reported shall consist of the minimum data elements necessary to discontinue that coverage for the child. This subdivision shall become operative on July 1, 2002, or the date that the program for accelerated enrollment coverage for children takes effect, whichever is later.

SEC. 45. Section 14011.7 is added to the Welfare and Institutions Code, to read:

14011.7. (a) To the extent allowed under federal law and only if federal financial participation is available, the department shall exercise the option provided in Section 1396r-1a of Title 42 of the United States Code and the Managed Risk Medical Insurance Board shall exercise the option provided in Section 1397gg(e)(1)(D) of Title 42 of the United States Code to implement a program for preenrollment of children into the Medi-Cal program or the Healthy Families Program. Upon the exercise of both of the federal options described in this subdivision, the department shall implement and administer a program of preenrollment of children into the Medi-Cal program or the Healthy Families Program.

(b) Before July 1, 2003, the department shall develop an electronic application to serve as the application for preenrollment into the Medi-Cal program or the Healthy Families Program and to also serve as an application for the Child Health and Disability Prevention (CHDP) program, to the extent allowed under federal law.

(c) (1) The department may designate, as necessary, those CHDP program providers described in paragraphs (1) to (5), inclusive, of subdivision (g) of Section 124030 of the Health and Safety Code as qualified entities who are authorized to determine eligibility for the CHDP program and for preenrollment into either the Medi-Cal program or the Healthy Families Program as authorized under this section.

(2) The CHDP provider shall assist the parent or guardian of the child seeking eligibility for the CHDP program and for preenrollment into the Medi-Cal program or the Healthy Families Program in completing the electronic application.

(d) The electronic application developed pursuant to subdivision (b) may only be filed through the CHDP program when the child is in need of CHDP program services in accordance with the periodicity schedule used by the CHDP program.

(e) (1) The electronic application developed pursuant to subdivision (b) shall request all information necessary for a CHDP provider to make an immediate determination as to whether a child meets the eligibility requirements for CHDP and for preenrollment into either the Medi-Cal program or the Healthy Families Program pursuant to the federal options described in Section 1396r-1a or 1397gg(e)(1)(D) of Title 42 of the United States Code.

(2) (A) If the electronic application indicates that the child is seeking eligibility for either no cost full-scope Medi-Cal benefits or enrollment in the Healthy Families Program, the department shall mail to the child's parent or guardian a followup application for Medi-Cal program eligibility or enrollment in the Healthy Families Program. The parent or guardian of the child shall be advised to complete and submit to the appropriate entity the followup application.

(B) The followup application, at a minimum, shall include all notices and forms necessary for both a Medi-Cal program and a Healthy Families Program eligibility determination under state and federal law, including, but not limited to, any information and documentation that is required for the joint application package described in Section 14011.1.

(C) The date of application for the Medi-Cal program or the Healthy Families Program is the date the completed followup application is submitted with the appropriate entity by the parent or guardian.

(3) Upon making a determination pursuant to paragraph (1) that a child is eligible, the CHDP provider shall inform the child's parent or guardian of both of the following:

(A) That the child has been determined to be eligible for services under the CHDP program and, if applicable, eligible for preenrollment into either the Medi-Cal program or the Healthy Families Program.

(B) That if the child has been determined to be eligible for preenrollment into either the Medi-Cal program or the Healthy Families Program, the period of preenrollment eligibility will end on the last day of the month following the month in which the determination of preenrollment eligibility is made, unless the parent or guardian completes and returns to the appropriate entity the followup application described in paragraph (2) on or before that date.

(4) If the followup application described in paragraph (2) is submitted on or before the last day of the month following the month in which a determination is made that the child is eligible for preenrollment into either the Medi-Cal program or the Healthy Families Program, the period of preenrollment eligibility shall continue until the completion of the determination process for the applicable program or programs.

(f) The scope and delivery of benefits provided to a child who is preenrolled for the Healthy Families Program pursuant to this section shall be identical to the scope and delivery of benefits received by a child who is preenrolled for the Medi-Cal program pursuant to this section.

(g) The department and the Managed Risk Medical Insurance Board shall seek approval of any amendments to the state plan, necessary to implement this section, for purposes of funding under Title XIX (42 U.S.C. 1396 et seq.) and Title XXI (42 U.S.C. 1397aa et seq.) of the Social Security Act. Notwithstanding any other provision of law and only when all necessary federal approvals have been obtained, this section shall be implemented only to the extent federal financial participation is available.

(h) Upon the implementation of this section, this section shall control in the event of a conflict with any provision of Article 6 (commencing with Section 124025) of Chapter 3 of Part 2 of Division 106 of the Health and Safety Code governing the Child Health and Disability Prevention program.

(i) To implement this section, the department may contract with public or private entities, or utilize existing health care service provider enrollment and payment mechanisms, including the Medi-Cal program's fiscal intermediary, only if services provided under the program are specifically identified and reimbursed in a manner that appropriately claims federal financial reimbursement. Contracts, including the Medi-Cal fiscal intermediary contract for the Child Health and Disability Prevention Program, including any contract amendment, any system change pursuant to a change order, and any project or systems development notice shall be exempt from Part 2 (commencing with Section 10100) of Division 2 of the Public Contract Code, Chapter 7 (commencing with Section 11700) of Part 1 of Division 3 of Title 2 of the Government Code, Section 19130 of the Government Code, and any policies, procedures, or regulations authorized by these laws.

(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 any further regulatory action. Thereafter, the department shall adopt regulations, as necessary, to implement this section 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) Notwithstanding subdivision (g), in no event shall this section be implemented before April 1, 2003.

SEC. 46. Section 14011.8 is added to the Welfare and Institutions Code, to read:

14011.8. (a) Benefits provided to an individual pursuant to a preliminary determination as described in Section 1396r-1, 1396r-1a, or 1396r-1b of Title 42 of the United States Code shall end, without the necessity for any further review or determination by the department, on or before the last day of the month following the month in which the preliminary determination was made, unless an application for medical assistance under the state plan is filed on or before that date.

(b) If an application for medical assistance is filed on or before the last day of the month following the month in which the preliminary determination was made, preliminary benefits shall continue until the regular eligibility determination based on the application has been completed. The application shall be treated in all respects as an initial application for benefits and the following shall apply:

(1) In the case of an applicant who is found eligible for medical assistance, benefits shall be granted in an amount and under those conditions, including imposition of a share of cost, as have been found applicable pursuant to the regular eligibility determination.

(2) In the case of all other applicants, provision of preliminary benefits shall end on the day that the regular eligibility determination is made.

(c) Notwithstanding any other provision of law, medical assistance pursuant to a preliminary determination as described in Section 1396r-1, 1396r-1a, or 1396r-1b of Title 42 of the United States Code shall be provided only if and to the extent federal financial participation is available.

SEC. 47. Section 14011.9 is added to the Welfare and Institutions Code, to read:

14011.9. (a) On or before October 1, 2002, the department shall issue instructions to counties via an all-county letter or similar instructions to establish an automated system for tracking the status of applications received by county welfare departments from the centralized processing entity that accepts and screens applications for benefits under the Medi-Cal program for the purpose of forwarding these applications to the appropriate counties. Except for reporting denials of applications on behalf of children enrolled in accelerated Medi-Cal coverage pursuant to subdivision (g) of Section 14011.6, the department shall not institute a process to require county welfare departments to routinely manually report to the Medi-Cal Eligibility Data System (MEDS) regarding the status of applications for Medi-Cal coverage prior to the development of an interface between that county's automated eligibility determination system and the MEDS system for the purposes of implementing this section. It is the intent of the Legislature that the Health Human Services Data Center and the counties complete the automation changes necessary to implement the automated tracking system on or before July 1, 2003.

(b) This section shall be implemented only to the extent that federal financial participation is not jeopardized.

(c) Nothing in this section shall be construed as prohibiting the department from requiring a county to report on the status of an individual application or to manually generate a report on a statistically valid sampling of applications pursuant to federally required monitoring activities.

SEC. 47.5. Section 14019.3 of the Welfare and Institutions Code is amended to read:

14019.3. (a) A beneficiary or any person on behalf of the beneficiary who has paid for health care services otherwise covered by the Medi-Cal program received by the beneficiary shall be entitled to a return from the provider of any part of the payment that meets all of the following:

(1) Was rendered during any period prior to the receipt of his or her Medi-Cal card, for which the card authorizes payment under Section 14018 or 14019.

(2) Was reimbursed to the provider by the Medi-Cal program, following all audits and appeals to which the provider is entitled.

(3) Is not payable by a third party under contractual or other legal entitlement.

(4) Was not used to satisfy his or her paid or obligated liability for health care services or to establish eligibility.

(b) To the extent permitted by federal law, whether or not a facility actually evicts a beneficiary, a beneficiary who may validly be evicted pursuant to Section 1439.7 of the Health and Safety Code, and who has received and paid for health care services otherwise covered by the Medi-Cal program shall not be entitled to the return from the provider of any part of the payment for which service was rendered during any period prior to the date upon which knowledge is acquired by the licensee of the application of the beneficiary for Medi-Cal or the date of application for Medi-Cal, whichever is later.

(c) Upon presentation of the Medi-Cal card or other proof of eligibility, the provider shall submit a Medi-Cal claim for reimbursement, subject to the rules and regulations of the Medi-Cal program.

(d) Notwithstanding subdivision (c), payment received from the state in accordance with Medi-Cal fee structures shall constitute payment in full, except that a provider, after making a full refund to the department of any Medi-Cal payments received for services, may recover all provider fees to the extent that any other contractual entitlement, including, but not limited to, a private group or indemnification insurance program, is obligated to pay the charges for the care provided the beneficiary.

(e) The provider shall return any and all payments made by the beneficiary, or any person on behalf of the beneficiary, other than a third party obligated to pay charges by reason of the beneficiary's other contractual or legal entitlement for Medi-Cal program covered services upon receipt of Medi-Cal payment.

(f) To the extent permitted by federal law, the department shall waive overpayments made to a pharmacy provider that would otherwise be reimbursable to the department for prescription drugs returned to the pharmacy provider from a nursing facility upon discontinuation of the drug therapy or death of the beneficiary.

SEC. 48. Section 14051 of the Welfare and Institutions Code is amended to read:

14051. (a) ''Medically needy person'' means any of the following:

(1) An aged, blind, or disabled person who meets the definition of aged, blind, or disabled under the Supplemental Security Income Program and whose income and resources are insufficient to provide for the costs of health care or coverage.

(2) A child in foster care for whom public agencies are assuming financial responsibility, in whole or in part, or a person receiving aid under Chapter 2.1 (commencing with Section 16115) of Part 4.

(3) A child who is eligible to receive Medi-Cal benefits pursuant to interstate agreements for adoption assistance and related services and benefits entered into under Chapter 2.6 (commencing with Section 16170) of Part 4, to the extent federal financial participation is available.

(b) ''Medically needy family person'' means a parent or caretaker relative of a child who meets the deprivation requirements of Aid to Families with Dependent Children or a child under 21 years of age or a pregnant woman of any age with a confirmed pregnancy, exclusive of those persons specified in subdivision (a), whose income and resources are insufficient to provide for the costs of health care or coverage.

SEC. 49. Section 14085.7 of the Welfare and Institutions Code is amended to read:

14085.7. (a) The Medi-Cal Medical Education Supplemental Payment Fund is hereby created in the State Treasury. Notwithstanding Section 13340 of the Government Code, the fund shall be continuously appropriated to, and under the administrative control of, the department for the purposes specified in this section. Except as otherwise limited by this section, the fund shall consist of all of the following:

(1) All public moneys transferred by public agencies to the department for deposit into the fund, as permitted under Section 433.51 of Title 42 of the Code of Federal Regulations or any other applicable federal medicaid laws.

(2) All private moneys donated by private individuals or entities to the department for deposit in the fund as permitted under applicable federal medicaid laws.

(3) Any amounts appropriated to the fund by the Legislature.

(4) Any interest that accrues on amounts in the fund.

(b) Any public agency transferring moneys to the fund may, for that purpose, utilize any revenues, grants, or allocations received from the state for health care programs or purposes, unless otherwise prohibited by law. A public agency may also utilize its general funds or any other public moneys or revenues for purposes of transfers to the fund, unless otherwise prohibited by law.

(c) The department shall have the discretion to accept or not accept moneys offered to the department for deposit in the fund. If the department accepts moneys pursuant to this section, the department shall obtain federal matching funds to the full extent permitted by law.

The department shall accept only those funds that are certified by the transferring or donating entity as qualifying for federal financial participation under the terms of the Medicaid Voluntary Contribution and Provider-Specific Tax Amendments of 1991 (P.L. 102-234) or Section 433.51 of Title 42 of the Code of Federal Regulations, as applicable, and may return any funds transferred or donated in error.

(d) Moneys in the fund shall be used as the source for the nonfederal share of payments to hospitals under this section. Moneys shall be allocated from the fund by the department and matched by federal funds in accordance with customary Medi-Cal accounting procedures for purposes of payments under subdivision (e). Distributions from the fund shall be supplemental to any other amounts that hospitals receive under the contracting program.

(e) For purposes of recognizing medical education costs incurred for services rendered to Medi-Cal beneficiaries, payments from this fund shall be negotiated between the California Medical Assistance Commission and hospitals contracting under this article that meet the definition of university teaching hospitals or major (nonuniversity) teaching hospitals as set forth on page 51 and as listed on page 57 of the department's report dated May 1991, entitled ''Hospital Peer Grouping.'' Payments from the fund shall be used solely for the purposes identified in the contract between the hospital and the state.

(f) The state shall be held harmless from any federal disallowance resulting from this section. A hospital receiving supplemental reimbursement pursuant to this section shall be liable for any reduced federal financial participation resulting from the implementation of this section with respect to that hospital. The state may recoup any federal disallowance from the hospital.

(g) This section shall become inoperative on July 1, 2004, and, as of January 1, 2005, is repealed, unless a later enacted statute, that becomes effective on or before January 1, 2005, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 50. Section 14085.8 of the Welfare and Institutions Code is amended to read:

14085.8. (a) The Large Teaching Emphasis Hospital and Children's Hospital Medi-Cal Medical Education Supplemental Payment Fund is hereby created in the State Treasury.

(b) Notwithstanding Section 13340 of the Government Code, the fund shall be continuously appropriated to, and under the administrative control of, the department for the purposes specified in this section.

(c) Except as otherwise limited by this section, the fund shall consist of all of the following:

(1) All public moneys transferred by public agencies to the department for deposit into the fund, as permitted under Section 433.51

of Title 42 of the Code of Federal Regulations or any other applicable federal medicaid laws.

(2) All private moneys donated by private individuals or entities to the department for deposit in the fund as permitted under applicable federal medicaid laws.

(3) Any amounts appropriated to the fund by the Legislature.

(4) Any interest that accrues on amounts in the fund.

(d) Any public agency transferring moneys to the fund may, for that purpose, utilize any revenues, grants, or allocations received from the state for health care programs or purposes, unless otherwise prohibited by law. A public agency may also utilize its general funds or any other public moneys or revenues for purposes of transfers to the fund, unless otherwise prohibited by law.

(e) The department may accept or not accept moneys offered to the department for deposit in the fund. If the department accepts moneys pursuant to this section, the department shall obtain federal matching funds to the full extent permitted by law. The department shall accept only those funds that are certified by the transferring or donating entity as qualifying for federal financial participation under the terms of the Medicaid Voluntary Contribution and Provider-Specific Tax Amendments of 1991 (P.L. 102-234) or Section 433.51 of Title 42 of the Code of Federal Regulations, as applicable, and may return any funds transferred or donated in error.

(f) Moneys in the fund shall be used as the source for the nonfederal share of payments to hospitals under this section. Moneys shall be allocated from the fund by the department and matched by federal funds in accordance with customary Medi-Cal accounting procedures for purposes of payments under subdivision (g). Distributions from the fund shall be supplemental to any other amounts that hospitals receive under the contracting program.

(g) (1) For purposes of recognizing medical education costs incurred for services rendered to Medi-Cal beneficiaries, contracts for payments from the fund may, at the discretion of the California Medical Assistance Commission, be negotiated between the commission and hospitals contracting under this article that are defined as either of the following:

(A) A large teaching emphasis hospital, as set forth on page 51 and listed on page 57 of the department's report dated May 1991, entitled ''Hospital Peer Grouping,'' and meets the definition of eligible hospital as defined in paragraph (3) of subdivision (a) of Section 14105.98.

(B) A children's hospital pursuant to Section 10727 and meets the definition of eligible hospital as defined in paragraph (3) of subdivision (a) of Section 14105.98.

(2) Payments from the fund shall be used solely for the purposes identified in the contract between the hospital and the state.

(h) The state shall be held harmless from any federal disallowance resulting from this section. A hospital receiving supplemental reimbursement pursuant to this section shall be liable for any reduced federal financial participation resulting from the implementation of this section with respect to that hospital. The state may recoup any federal disallowance from the hospital.

(i) This section shall become inoperative on July 1, 2004, and, as of January 1, 2005, is repealed, unless a later enacted statute, that becomes effective on or before January 1, 2005, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 51. Section 14103.6 of the Welfare and Institutions Code, as amended by Section 1 of Chapter 1005 of the Statutes of 1975, is amended to read:

14103.6. The director, or a carrier acting under regulations adopted by the director, may require that any individual provider shall receive prior authorization before providing services when the director or carrier determines that the provider has been rendering unnecessary services.

At any time the director determines that it is necessary to postpone elective services pursuant to Section 14120, he or she shall require prior authorization for those services determined to be generally elective under the provisions of Section 14103.4, except a service which costs less than one hundred dollars ($100) or a lower amount determined by the director. This lower amount may be applied generally or for specific services. The director may terminate the requirement for prior authorization when he or she determines that it is no longer necessary to postpone elective services.

Prior authorization for services provided by persons licensed under the provisions of Chapter 4 (commencing with Section 1600) and Chapter 7 (commencing with Section 3000) of Division 2 of the Business and Professions Code shall be determined by consultants licensed under Chapter 4 or Chapter 7 respectively. Prior authorization for all other elective services shall be determined by consultants licensed under the provisions of Chapter 5 (commencing with Section 2000) of Division 2 of the Business and Professions Code, provided, however, that prior authorization for pharmaceutical services may be determined by persons licensed under the provisions of Chapter 9 (commencing with Section 4000) of Division 2 of the Business and Professions Code, and prior authorization for services provided in an inpatient setting may be reviewed and approved, but not denied, by a person licensed under the provisions of Chapter 6 (commencing with Section 2700) of Division 2 of the Business and Professions Code, working under the supervision of a consultant licensed under the provisions of Chapter 5 (commencing with Section 2000) of Division 2 of the Business and Professions Code.

In no event shall prior authorization be required when there is a bona fide emergency requiring immediate treatment.

In carrying out this section, notwithstanding Section 19130 of the Government Code, the department may contract, either directly or through the fiscal intermediary, for staff to accomplish the treatment authorization request reviews and medical case management, including appeals. The fiscal intermediary contract, including any contract amendment, system change pursuant to a change order, and project or systems development notice shall be exempt from Part 2 (commencing with Section 10100) of Division 2 of the Public Contract Code, Chapter 7 (commencing with Section 11700) of Part 1 of Division 3 of Title 2 of the Government Code, and any policies, procedures, or regulations authorized by those laws.

SEC. 52. Section 14103.6 of the Welfare and Institutions Code, as amended by Section 1 of Chapter 682 of the Statutes of 1985, is amended to read:

14103.6. The director, or a carrier acting under regulations adopted by the director, may require that any individual provider shall receive prior authorization before providing services when the director or carrier determines that the provider has been rendering unnecessary services.

At any time the director determines that it is necessary to postpone elective services pursuant to Section 14120, he or she shall require prior authorization for those services determined to be generally elective under the provisions of Section 14103.4, except a service which costs less than one hundred dollars ($100) or a lower amount determined by the director. This lower amount may be applied generally or for specific services. The director may terminate the requirement for prior authorization when he or she determines that it is no longer necessary to postpone elective services.

Prior authorization for services provided by persons licensed under the provisions of Chapter 4 (commencing with Section 1600) and Chapter 7 (commencing with Section 3000) of Division 2 of the Business and Professions Code shall be determined by consultants licensed under Chapter 4 or Chapter 7 respectively. Prior authorization for all other elective services shall be determined by consultants licensed under the provisions of Chapter 5 (commencing with Section 2000) of Division 2 of the Business and Professions Code, provided, however, that prior authorization for pharmaceutical services may be determined by persons licensed under the provisions of Chapter 9 (commencing with Section 4000) of Division 2 of the Business and Professions Code, and prior authorization for services provided in an inpatient setting may be reviewed and approved, but not denied, by a person licensed under the provisions of Chapter 6 (commencing with Section 2700) of Division 2 of the Business and Professions Code, working under the

supervision of a consultant licensed under the provisions of Chapter 5 (commencing with Section 2000) of Division 2 of the Business and Professions Code.

The consultants shall render decisions on prior authorization requests in a timely manner. A timely manner shall be deemed to be an average of five working days after the prior authorization request is received by the department. A decision shall be an approval, denial, modification, or request for additional information. A supplemental authorization request submitted with additional information requested by a consultant shall be processed in a timely manner as if it were an original authorization request. If no decision on a prior authorization request is rendered by the consultant within 30 days of receipt by the department, the request shall be deemed to be approved. Final decisions of the department on all requests for prior authorization shall be reviewable under the department's provider appeal and fair hearing procedures. If the request is denied, the department shall send notice to the provider and beneficiary of the right to appeal the decision.

In no event shall prior authorization be required when there is a bona fide emergency requiring immediate treatment.

In carrying out this section, notwithstanding Section 19130 of the Government Code, the department may contract, either directly or through the fiscal intermediary, for staff to accomplish the treatment authorization request reviews and medical case management, including appeals. The fiscal intermediary contract, including any contract amendment, system change pursuant to a change order, and project or systems development notice shall be exempt from Part 2 (commencing with Section 10100) of Division 2 of the Public Contract Code, Chapter 7 (commencing with Section 11700) of Part 1 of Division 3 of Title 2 of the Government Code, and any policies, procedures, or regulations authorized by those laws.

SEC. 53. Section 14105.18 is added to the Welfare and Institutions Code, to read:

14105.18. (a) Notwithstanding any other provision of law, provider rates of payment for services rendered in all of the following programs shall be identical to the rates of payment for the same service performed by the same provider type pursuant to the Medi-Cal program.

(1) The California Children's Services Program established pursuant to Article 5 (commencing with Section 123800) of Chapter 3 of Part 2 of Division 106 of the Health and Safety Code.

(2) The Genetically Handicapped Person's Program established pursuant to Article 1 (commencing with Section 125125) of Chapter 2 of Part 5 of Division 106 of the Health and Safety Code.

(3) The Breast and Cervical Cancer Early Detection Program established pursuant to Article 1.5 (commencing with Section 104150)

of Chapter 2 of Part 1 of Division 103 of the Health and Safety Code and the breast cancer programs specified in Section 30461.6 of the Revenue and Taxation Code.

(4) The State-Only Family Planning Program established pursuant to Division 24 (commencing with Section 24000).

(5) The Family Planning, Access, Care, and Treatment (Family PACT) Waiver Program established pursuant to subdivision (aa) of Section 14132.

(b) The director may identify in regulations other programs not listed in subdivision (a) in which providers shall be paid rates of payment that are identical to the rates of payments in the Medi-Cal program pursuant to subdivision (a).

(c) Notwithstanding subdivision (a), services provided under any of the programs described in subdivisions (a) and (b) may be reimbursed at rates greater than the Medi-Cal rate that would otherwise be applicable if those rates are adopted by the director in regulations.

SEC. 53.5. Section 14105.2 of the Welfare and Institutions Code is amended to read:

14105.2. (a) The allowable markup payable for the dispensing of medical supplies by assistive device and sickroom supply dealers and pharmacies shall not exceed 23 percent of the cost of the item dispensed, as defined by the department.

(b) Payment for diabetic testing supplies shall not exceed the cost of the item dispensed, as defined by the department, plus a fee equal to the maximum professional fee component used in the payment for legend generic drug types.

SEC. 54. Section 14105.3 of the Welfare and Institutions Code is amended to read:

14105.3. (a) The department is considered to be the purchaser, but not the dispenser or distributor, of prescribed drugs under the Medi-Cal program for the purpose of enabling the department to obtain from manufacturers of prescribed drugs the most favorable price for those drugs furnished by one or more manufacturers, based upon the large quantity of the drugs purchased under the Medi-Cal program, and to enable the department, notwithstanding any other provision of state law, to obtain from the manufacturers discounts, rebates, or refunds based on the quantities purchased under the program, insofar as may be permissible under federal law. Nothing in this section shall interfere with usual and customary distribution practices in the drug industry.

(b) The department may enter into exclusive or nonexclusive contracts on a bid or negotiated basis with manufacturers, distributors, dispensers, or suppliers of appliances, durable medical equipment, medical supplies, and other product-type health care services and with laboratories for clinical laboratory services for the purpose of obtaining

the most favorable prices to the state and to assure adequate quality of the product or service. This subdivision shall not apply to pharmacies licensed pursuant to Section 4080 of the Business and Professions Code.

(c) Notwithstanding subdivision (b), the department may not enter into a contract with a clinical laboratory unless the clinical laboratory operates in conformity with Chapter 3 (commencing with Section 1200) of Division 2 of the Business and Professions Code and the regulations adopted thereunder, and Section 263a of Title 42 of the United States Code and the regulations adopted thereunder.

(d) The department shall contract with manufacturers of single-source drugs on a negotiated basis, and with manufacturers of multisource drugs on a bid or negotiated basis.

(e) In carrying out contracting activity for this or any section associated with the Medi-Cal list of contract drugs, notwithstanding Section 19130 of the Government Code, the department may contract, either directly or through the fiscal intermediary, for pharmacy consultant staff necessary to accomplish the contracting process or treatment authorization request reviews. The fiscal intermediary contract, including any contract amendment, system change pursuant to a change order, and project or systems development notice shall be exempt from Part 2 (commencing with Section 10100) of Division 2 of the Public Contract Code, Chapter 7 (commencing with Section 11700) of Part 1 of Division 3 of Title 2 of the Government Code, and any policies, procedures, or regulations authorized by these provisions.

(f) In order to achieve maximum cost savings the Legislature hereby determines that an expedited contract process for contracts under this section is necessary. Therefore contracts under this section shall be exempt from Chapter 2 (commencing with Section 10290) of Part 2 of Division 2 of the Public Contract Code.

(g) For purposes of implementing the contracting provisions specified in this section, the department shall do all of the following:

(1) Ensure adequate access for Medi-Cal patients to quality laboratory testing services in the geographic regions of the state where contracting occurs.

(2) Consult with the statewide association of clinical laboratories and other appropriate stakeholders on the implementation of the contracting provisions specified in this section to ensure maximum access for Medi-Cal patients consistent with the savings targets projected by the 2002–03 Budget Conference Committee for clinical laboratory services provided under the Medi-Cal program.

(3) Consider which types of laboratories are appropriate for implementing the contracting provisions specified in this section, including independent laboratories, outreach laboratory programs of

hospital based laboratories, clinic laboratories, physician office laboratories, and group practice laboratories.

SEC. 55. Section 14105.31 of the Welfare and Institutions Code is amended to read:

14105.31. For purposes of the Medi-Cal contract drug list, the following definitions shall apply:

(a) ''Single-source drug'' means a drug that is produced and distributed under an original New Drug Application approved by the federal Food and Drug Administration. This shall include a drug marketed by the innovator manufacturer and any cross-licensed producers or distributors operating under the New Drug Application, and shall also include a biological product, except for vaccines, marketed by the innovator manufacturer and any cross-licensed producers or distributors licensed by the federal Food and Drug Administration pursuant to Section 262 of Title 42 of the United States Code. A drug ceases to be a single-source drug when the same drug in the same dosage form and strength manufactured by another manufacturer is approved by the federal Food and Drug Administration under the provisions for an Abbreviated New Drug Application.

(b) ''Best price'' means the negotiated price, or the manufacturer's lowest price available to any class of trade organization or entity, including, but not limited to, wholesalers, retailers, hospitals, repackagers, providers, or governmental entities within the United States, that contracts with a manufacturer for a specified price for drugs, inclusive of cash discounts, free goods, volume discounts, rebates, and on- or off-invoice discounts or credits, shall be based upon the manufacturer's commonly used retail package sizes for the drug sold by wholesalers to retail pharmacies.

(c) ''Equalization payment amount'' means the amount negotiated between the manufacturer and the department for reimbursement by the manufacturer, as specified in the contract. The equalization payment amount shall be based on the difference between the manufacturer's direct catalog price charged to wholesalers and the manufacturer's best price, as defined in subdivision (b).

(d) ''Manufacturer'' means any person, partnership, corporation, or other institution or entity that is engaged in the production, preparation, propagation, compounding, conversion, or processing of drugs, either directly or indirectly by extraction from substances of natural origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, or in the packaging, repackaging, labeling, relabeling, and distribution of drugs.

(e) ''Price escalator'' means a mutually agreed upon price specified in the contract, to cover anticipated cost increases over the life of the contract.

(f) ''Medi-Cal pharmacy costs'' or ''Medi-Cal drug costs'' means all reimbursements to pharmacy providers for services or merchandise, including single-source or multiple-source prescription drugs, over-the-counter medications, and medical supplies, or any other costs billed by pharmacy providers under the Medi-Cal program.

(g) ''Medicaid rebate'' means the rebate payment made by drug manufacturers pursuant to Section 1927 of the federal Social Security Act (42 U.S.C. Sec. 1396r-8).

(h) ''State rebate'' means any negotiated rebate under the Drug Discount Program in addition to the medicaid rebate.

(i) ''Date of mailing'' means the date that is evidenced by the postmark date by the United States Postal Service or other common mail carrier on the envelope.

SEC. 56. Section 14105.33 of the Welfare and Institutions Code is amended to read:

14105.33. (a) The department may enter into contracts with manufacturers of single-source and multiple-source drugs, on a bid or nonbid basis, for drugs from each major therapeutic category, and shall maintain a list of those drugs for which contracts have been executed.

(b) (1) Contracts executed pursuant to this section shall be for the manufacturer's best price, as defined in Section 14105.31, which shall be specified in the contract, and subject to agreed-upon price escalators, as defined in that section. The contracts shall provide for an equalization payment amount, as defined in Section 14105.31, to be remitted to the department quarterly. The department shall submit an invoice to each manufacturer for the equalization payment amount, including supporting utilization data from the department's prescription drug paid claims tapes within 30 days of receipt of the Centers for Medicare and Medicaid Services' file of manufacturer rebate information. In lieu of paying the entire invoiced amount, a manufacturer may contest the invoiced amount pursuant to procedures established by the federal Centers for Medicare and Medicaid Services' Medicaid Drug Rebate Program Releases or regulations by mailing a notice, that shall set forth its grounds for contesting the invoiced amount, to the department within 38 days of the department's mailing of the state invoice and supporting utilization data. For purposes of state accounting practices only, the contested balance shall not be considered an accounts receivable amount until final resolution of the dispute pursuant to procedures established by the federal Centers for Medicare and Medicaid Services' Medicaid Drug Rebate Program Releases or regulations that results in a finding of an underpayment by the manufacturer. Manufacturers may request, and the department shall timely provide, at cost, Medi-Cal provider level drug utilization data, and other Medi-Cal utilization data necessary to resolve a contested department-invoiced rebate amount.

(2) The department shall provide for an annual audit of utilization data used to calculate the equalization amount to verify the accuracy of that data. The findings of the audit shall be documented in a written audit report to be made available to manufacturers within 90 days of receipt of the report from the auditor. Any manufacturer may receive a copy of the audit report upon written request. Contracts between the department and manufacturers shall provide for any equalization payment adjustments determined necessary pursuant to an audit.

(3) Utilization data used to determine an equalization payment amount shall exclude data from both of the following:

(A) Health maintenance organizations, as defined in Section 300e(a) of Title 42 of the United States Code, including those organizations that contract under Section 1396b(m) of Title 42 of the United States Code.

(B) Capitated plans that include a prescription drug benefit in the capitated rate, and that have negotiated contracts for rebates or discounts with manufacturers.

(c) In order that Medi-Cal beneficiaries may have access to a comprehensive range of therapeutic agents, the department shall ensure that there is representation on the list of contract drugs in all major therapeutic categories. Except as provided in subdivision (a) of Section 14105.35, the department shall not be required to contract with all manufacturers who negotiate for a contract in a particular category. The department shall ensure that there is sufficient representation of single-source and multiple-source drugs, as appropriate, in each major therapeutic category.

(d) The department shall select the therapeutic categories to be included on the list of contract drugs, and the order in which it seeks contracts for those categories. The department may establish different contracting schedules for single-source and multiple-source drugs within a given therapeutic category.

(e) (1) In order to fully implement subdivision (d), the department shall, to the extent necessary, negotiate or renegotiate contracts to ensure there are as many single-source drugs within each therapeutic category or subcategory as the department determines necessary to meet the health needs of the Medi-Cal population. The department may determine in selected therapeutic categories or subcategories that no single-source drugs are necessary because there are currently sufficient multiple-source drugs in the therapeutic category or subcategory on the list of contract drugs to meet the health needs of the Medi-Cal population. However, in no event shall a beneficiary be denied continued use of a drug which is part of a prescribed therapy in effect as of September 2, 1992, until the prescribed therapy is no longer prescribed.

(2) In the development of decisions by the department on the required number of single-source drugs in a therapeutic category or subcategory,

and the relative therapeutic merits of each drug in a therapeutic category or subcategory, the department shall consult with the Medi-Cal Contract Drug Advisory Committee. The committee members shall communicate their comments and recommendations to the department within 30 business days of a request for consultation, and shall disclose any associations with pharmaceutical manufacturers or any remuneration from pharmaceutical manufacturers.

(f) In order to achieve maximum cost savings, the Legislature declares that an expedited process for contracts under this section is necessary. Therefore, contracts entered into on a nonbid basis shall be exempt from Chapter 2 (commencing with Section 10290) of Part 2 of Division 2 of the Public Contract Code.

(g) In no event shall a beneficiary be denied continued use of a drug that is part of a prescribed therapy in effect as of September 2, 1992, until the prescribed therapy is no longer prescribed.

(h) Contracts executed pursuant to this section shall be confidential and shall be exempt from disclosure under the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code).

(i) The department shall provide individual notice to Medi-Cal beneficiaries at least 60 calendar days prior to the effective date of the deletion or suspension of any drug from the list of contract drugs. The notice shall include a description of the beneficiary's right to a fair hearing and shall encourage the beneficiary to consult a physician to determine if an appropriate substitute medication is available from Medi-Cal.

(j) In carrying out the provisions of this section, the department may contract either directly, or through the fiscal intermediary, for pharmacy consultant staff necessary to initially accomplish the treatment authorization request reviews.

(k) (1) Manufacturers shall calculate and pay interest on late or unpaid rebates. The interest shall not apply to any prior period adjustments of unit rebate amounts or department utilization adjustments.

(2) For state rebate payments, manufacturers shall calculate and pay interest on late or unpaid rebates for quarters that begin on or after the effective date of the act that added this subdivision.

(3) Following final resolution of any dispute pursuant to procedures established by the federal Centers for Medicare and Medicaid Services' Medicaid Drug Rebate Program Releases or regulations regarding the amount of a rebate, any underpayment by a manufacturer shall be paid with interest calculated pursuant to subdivisions (m) and (n), and any overpayment, together with interest at the rate calculated pursuant to

subdivisions (m) and (n), shall be credited by the department against future rebates due.

(*l*) Interest pursuant to subdivision (k) shall begin accruing 38 calendar days from the date of mailing of the invoice, including supporting utilization data sent to the manufacturer. Interest shall continue to accrue until the date of mailing of the manufacturer's payment.

(m) Except as specified in subdivision (n), interest rates and calculations pursuant to subdivision (k) for medicaid rebates and state rebates shall be identical and shall be determined by the federal Centers for Medicare and Medicaid Services' Medicaid Drug Rebate Program Releases or regulations.

(n) If the date of mailing of a state rebate payment is 69 days or more from the date of mailing of the invoice, including supporting utilization data sent to the manufacturer, the interest rate and calculations pursuant to subdivision (k) shall be as specified in subdivision (m), however the interest rate shall be increased by 10 percentage points. This subdivision shall apply to payments for amounts invoiced for any quarters that begin on or after the effective date of the act that added this subdivision.

(o) If the rebate payment is not received, the department shall send overdue notices to the manufacturer at 38, 68, and 98 days after the date of mailing of the invoice, and supporting utilization data. If the department has not received a rebate payment, including interest, within 180 days of the date of mailing of the invoice, including supporting utilization data, the manufacturer's contract with the department shall be deemed to be in default and the contract may be terminated in accordance with the terms of the contract. For all other manufacturers, if the department has not received a rebate payment, including interest, within 180 days of the date of mailing of the invoice, including supporting utilization data, all of the drug products of those manufacturers shall be made available only through prior authorization effective 270 days after the date of mailing of the invoice, including utilization data sent to manufacturers.

(p) If the manufacturer provides payment or evidence of payment to the department at least 40 days prior to the proposed date the drug is to be made available only through prior authorization pursuant to subdivision (o), the department shall terminate its actions to place the manufacturers' drug products on prior authorization.

(q) The department shall direct the state's fiscal intermediary to remove prior authorization requirements imposed pursuant to subdivision (o) and notify providers within 60 days after payment by the manufacturer of the rebate, including interest. If a contract was in place at the time the manufacturers' drugs were placed on prior authorization,

removal of prior authorization requirements shall be contingent upon good faith negotiations and a signed contract with the department.

(r) A beneficiary may obtain drugs placed on prior authorization pursuant to subdivision (o) if the beneficiary qualifies for continuing care status. To be eligible for continuing care status, a beneficiary must be taking the drug when its manufacturer is placed on prior authorization status. Additionally, the department shall have received a claim for the drug with a date of service that is within 100 days prior to the date the manufacturer was placed on prior authorization.

(s) A beneficiary may remain eligible for continuing care status, provided that a claim is submitted for the drug in question at least every 100 days and the date of service of the claim is within 100 days of the date of service of the last claim submitted for the same drug.

(t) Drugs covered pursuant to Sections 14105.43 and 14133.2 shall not be subject to prior authorization pursuant to subdivision (o), and any other drug may be exempted from prior authorization by the department if the director determines that an essential need exists for that drug, and there are no other drugs currently available without prior authorization that meet that need.

(u) It is the intent of the Legislature in enacting subdivisions (k) to (t), inclusive, that the department and manufacturers shall cooperate and make every effort to resolve rebate payment disputes within 90 days of notification by the manufacturer to the department of a dispute in the calculation of rebate payments.

SEC. 57. Section 14105.332 is added to the Welfare and Institutions Code, to read:

14105.332. State and federal rebates that are owed to the state for drugs dispensed to fee-for-service Medi-Cal beneficiaries shall not be reduced to the state if a manufacturer reports, to the Centers for Medicare and Medicaid Services or the department, a revised drug product's average manufacturer price or best price as these terms are defined pursuant to Section 1927 of the federal Social Security Act (42 U.S.C. Sec. 1396r-8) for any calendar quarter in which the rebate was due.

SEC. 58. Section 14105.337 of the Welfare and Institutions Code is amended to read:

14105.337. (a) Effective January 1, 2000, the department shall increase reimbursement to pharmacists by twenty-five cents ($0.25) per prescription for all drug prescription claims reimbursed through the Medi-Cal program.

(b) Effective July 1, 2002, the department shall increase reimbursement to pharmacists by an additional fifteen cents ($0.15) per prescription for all drug prescription claims reimbursed through the Medi-Cal program.

(c) (1) The department shall reduce reimbursement to pharmacists in the amount reimbursement was increased pursuant to subdivisions (a) and (b) with respect to pharmacy services rendered on and after the date that this subdivision is enacted. Claims submitted by pharmacists for beneficiaries residing in a nursing facility shall be exempt from this subdivision.

(2) This subdivision shall become inoperative on July 1, 2004.

SEC. 59. Section 14105.34 of the Welfare and Institutions Code is amended to read:

14105.34. (a) The department shall provide for an annual written report of Medi-Cal pharmacy costs or Medi-Cal drug costs, as defined in subdivision (f) of Section 14105.31.

(b) The annual report shall be consistent with the relevant sections of the Quarterly Report of Expenditures for the Medi-Cal Assistance Program, known as the HCFA-64 Report, provided to the Centers for Medicare and Medicaid Services. The report shall include the following expenditure and receipt information:

(1) The total annual equalization payment amounts received by the department pursuant to agreements with the Centers for Medicare and Medicaid Services of the United States Department of Health and Human Services.

(2) The total annual equalization payment amounts received pursuant to state contracts with drug manufacturers.

(3) Total drug cost amounts upon which equalization payments were made.

SEC. 60. Section 14105.35 of the Welfare and Institutions Code is amended to read:

14105.35. (a) (1) On and after July 1, 1990, drugs included on the Medi-Cal drug formulary shall be included on the list of contract drugs until the department and the manufacturer have concluded contract negotiations or the department suspends the drug from the list of contract drugs pursuant to the provisions of this subdivision.

The department shall, in writing, invite any manufacturer with single-source drug products on the formulary as of July 1, 1990, to enter into negotiations relative to the retention of its drug or drugs. As to the issue of cost, the department shall accept the manufacturer's best price as sufficient for purposes of entering into a contract to retain the drug or drugs on the list of contract drugs.

If the department and a manufacturer enter into a contract for retention of a drug or drugs on the list of contract drugs, the drug or drugs shall be retained on the list of contract drugs for the effective term of the contract.

If a manufacturer refuses to enter into negotiations with the department pursuant to this subdivision, or if after 30 days of

negotiation, the manufacturer has not agreed to execute a contract for a drug at the manufacturer's best price, the department may suspend from the list of contract drugs the manufacturer's single-source drug in question for a period of at least 180 days. The department shall lift the suspension upon execution of a contract for that drug. Consistent with the provisions of this section, the department shall delete the Medi-Cal drug formulary specified in paragraphs (b), (c), (d), and (e) of Section 59999 of Title 22 of the California Code of Regulations.

(2) On and after July 1, 1990, the director may retain a drug on the Medi-Cal list of contract drugs even if no contract is executed with a manufacturer, if the director determines that an essential need exists for that drug, and there are no other drugs currently on the formulary that meet that need.

(3) The director may delete a drug from the list of contract drugs if the director determines that the drug presents problems of safety or misuse. The director's decision as to safety shall be based upon published medical literature, and the director's decision as to misuse shall be based on published medical literature and claims data supplied by the fiscal intermediary.

(b) Any reference to the Medi-Cal drug formulary by statute or regulation shall be construed as referring to the list of contract drugs.

(c) (1) Any drug in the process of being added to the formulary by contract agreement pursuant to Section 14105.3, executed prior to the effective date of this section, shall be added to the list of contract drugs.

(2) Contracts pursuant to Section 14105.3 executed prior to January 1, 1991, shall be considered to be contracts executed pursuant to Section 14105.33, and the department shall exempt the drugs included in these contracts from the initial therapeutic category review in which they would normally be considered.

(3) Nothing in this section shall be construed to require the department to discontinue negotiations into which it has entered with any manufacturer as of the effective date of this section. Contracts entered into as a result of these negotiations shall be exempt from the initial therapeutic category review in which they would normally be considered.

SEC. 61. Section 14105.37 of the Welfare and Institutions Code is amended to read:

14105.37. (a) The department shall notify each manufacturer of drugs in therapeutic categories selected pursuant to Section 14105.33 of the provisions of Sections 14105.31 to 14105.42, inclusive.

(b) If, within 45 days of notification, a manufacturer does not enter into negotiations for a contract pursuant to those sections, the department may suspend or delete from the list of contract drugs, or

refuse to consider for addition, drugs of that manufacturer in the selected therapeutic categories.

(c) If, after 150 days from the initial notification, a contract is not executed for a drug currently on the list of contract drugs, the department may suspend or delete the drug from the list of contract drugs.

(d) If, within 150 days from the initial notification, a contract is executed for a drug currently on the list of contract drugs, the department shall retain the drug on the list of contract drugs.

(e) If, within 150 days from the date of the initial notification, a contract is executed for a drug not currently on the list of contract drugs, the department shall add the drug to the list of contract drugs.

(f) The department shall terminate all negotiations 150 days after the initial notification.

(g) The department may suspend or delete any drug from the list of contract drugs at the expiration of the contract term or when the contract between the department and the manufacturer of that drug is terminated.

(h) In the absence of a contract, the department may suspend or delete any drug from the list of contract drugs.

(i) Any drug suspended from the list of contract drugs pursuant to this section or Section 14105.35 shall be subject to prior authorization, as if that drug were not on the list of contract drugs.

(j) Any drug suspended from the list of contract drugs pursuant to this section or Section 14105.35 may be deleted from the list of contract drugs in accordance with Section 14105.38.

SEC. 62. Section 14105.38 of the Welfare and Institutions Code is amended to read:

14105.38. (a) (1) In the event the department determines a drug should be deleted from the list of contract drugs, the department shall conduct a public hearing, as provided in this section, to receive comment on the impact of removing the drug.

(2) (A) The department shall provide written notice 30 days prior to the hearing.

(B) The department shall send the notice required by this subdivision to the manufacturer of the drug proposed to be deleted and to organizations representing Medi-Cal beneficiaries.

(b) (1) The hearing panel shall consist of the Chief, Medi-Cal Drug Discount Program, who shall serve as chair, and the Medi-Cal Contract Drug Advisory Committee.

(2) The hearing shall be recorded and transcribed, and the transcript available for public review.

(3) Subsequent to hearing all public comment, and within 30 days of the hearing, each panel member shall submit a recommendation regarding deletion of the drug and the reason for the recommendation to the director.

(c) The director shall consider public comments provided at the hearing and the recommendations of each panel member in determining whether to delete the drug.

SEC. 63. Section 14105.39 of the Welfare and Institutions Code is amended to read:

14105.39. (a) (1) A manufacturer of a new single-source drug may request inclusion of its drug on the list of contract drugs pursuant to Section 14105.33 provided all of the following conditions are met:

(A) The request is made within 12 months of approval for marketing by the federal Food and Drug Administration.

(B) The manufacturer agrees to negotiate a contract with the department to provide the drug at the manufacturer's best price.

(C) (i) The manufacturer provides the department with necessary information, as specified by the department, in the request.

(ii) Notwithstanding clause (i), either of the following may be submitted by the manufacturer in lieu of the Summary Basis of Approval prepared by the federal Food and Drug Administration for that drug:

(I) The federal Food and Drug Administration's approval or approvable letter for the drug and federal Food and Drug Administration's approved labeling.

(II) The federal Food and Drug Administration's medical officers' and pharmacologists' reviews and the federal Food and Drug Administration's approved labeling.

(D) The department had concluded contracting for the therapeutic category in which the drug is included prior to approval of the drug by the federal Food and Drug Administration.

(2) Within 90 days from receipt of the request, the department shall evaluate the request using the criteria identified in subdivision (d), and shall submit the drug to the Medi-Cal Contract Drug Advisory Committee.

(b) Any petition for the addition to or deletion of a drug to the Medi-Cal drug formulary submitted prior to July 31, 1990, shall be deemed to be denied. A manufacturer who has submitted a petition deemed denied may request inclusion of that drug on the list of contract drugs provided all of the following conditions are met:

(1) The manufacturer agrees to negotiate for a contract with the department to provide the drug at the manufacturer's best price.

(2) The manufacturer provides the department with necessary information, as specified by the department, in the request.

(3) The manufacturer submits the request to the department prior to October 1, 1990.

(c) (1) To ensure that the health needs of Medi-Cal beneficiaries are met consistent with the intent of this chapter, the department shall, when evaluating a decision to execute a contract, and when evaluating drugs

for retention on, addition to, or deletion from, the list of contract drugs, use all of the following criteria:

(A) The safety of the drug.

(B) The effectiveness of the drug.

(C) The essential need for the drug.

(D) The potential for misuse of the drug.

(E) The cost of the drug.

(2) The deficiency of a drug when measured by one of these criteria may be sufficient to support a decision that the drug should not be added or retained, or should be deleted from the list. However, the superiority of a drug under one criterion may be sufficient to warrant the addition or retention of the drug, notwithstanding a deficiency in another criterion.

(d) (1) A manufacturer of single-source drugs denied a contract pursuant to this section or Section 14105.33 or 14105.37, may file an appeal of that decision with the director within 30 calendar days of the department's written decision.

(2) Within 30 calendar days of the manufacturer's appeal, the director shall request a recommendation regarding the appeal from the Medi-Cal Contract Drug Advisory Committee. The committee shall provide its recommendation in writing, within 30 calendar days of the director's request.

(3) The director shall issue a final decision on the appeal within 30 calendar days of the recommendation.

(e) Deletions made to the list of contract drugs, including those made pursuant to Section 14105.37, shall become effective no sooner than 30 days after publication of the changes in provider bulletins.

(f) A manufacturer of a drug deleted from, or not added to, the list of contract drugs may request inclusion of the drug on the list of preferred prior authorization drugs that is hereby established as a subset of the list of contract drugs. To ensure that the health needs of Medi-Cal beneficiaries are met, the department shall evaluate the request pursuant to subdivision (c). The department shall give preference for prior authorization drugs based on the medical need or continuing care of the beneficiary. The department may contract with manufacturers of drugs on the list of preferred prior authorization drugs. Contracts executed pursuant to this subdivision are subject to Section 14105.33.

(g) Changes made to the list of contract drugs under this or any other section are exempt from the requirements of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340), Chapter 4 (commencing with Section 11370), and Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code), and shall not be subject to the review and approval of the Office of Administrative Law.

SEC. 64. Section 14105.4 of the Welfare and Institutions Code, as amended by Section 78 of Chapter 93 of the Statutes of 2000, is repealed.

SEC. 65. Section 14105.4 of the Welfare and Institutions Code, as amended by Section 77 of Chapter 93 of the Statutes of 2000, is amended to read:

14105.4. (a) The director shall appoint a Medi-Cal Contract Drug Advisory Committee for the purpose of providing scientific and medical analysis on drugs contained on the list of contract drugs. The duties of the committee shall be as follows:

(1) To review drugs in the Medi-Cal list of contract drugs and make written recommendations to the director as to the addition of any drug or the deletion of any drug from the list. These recommendations shall be in accordance with subdivision (c) of Section 14105.39.

(2) To review and report in writing to the director as to the comparative therapeutic effect of drugs in accordance with Section 14053.5.

(3) To prepare a fair, impartial, and independent recommendation in writing, regarding appeals from manufacturers made pursuant to subdivision (d) of Section 14105.39.

(b) The committee shall consist of at least one representative from each of the following groups:

(1) Physicians.

(2) Pharmacists.

(3) Schools of pharmacy or pharmacologists.

(4) Medi-Cal beneficiaries.

(c) Members of the committee shall be reimbursed for necessary travel and other expenses incurred in the performance of official committee duties.

(d) In order to provide sufficient scientific information and analysis in the therapeutic categories under review, the director may replace a representative if required for specific expertise.

(e) The director shall notify the committee of the decisions made on the recommendations.

SEC. 66. Section 14105.405 of the Welfare and Institutions Code is amended to read:

14105.405. (a) A Medi-Cal beneficiary, within 90 days of receipt of the director's notice to beneficiaries pursuant to subdivision (i) of Section 14105.33, informing them of the decision to delete or suspend a drug from the list of contract drugs, may request a fair hearing pursuant to Chapter 7 (commencing with Section 10950) of Part 2.

(b) Any beneficiary filing a fair hearing request regarding the deletion or suspension of a drug from the list of contract drugs shall be granted a treatment authorization request for that drug until a final decision is adopted by the director. Should the beneficiary seek judicial review of

the director's decision, a treatment authorization request shall be granted for that drug until a final decision is issued by the court.

(c) (1) Any Medi-Cal beneficiary, within one year of the director's decision pursuant to Section 10959, may file a petition with the superior court, under the provisions of Section 1094.5 of the Code of Civil Procedure, praying for a review of both the legal and factual basis for the director's decision.

(2) The director shall be the sole respondent in these proceedings.

(d) Any Medi-Cal beneficiary injured as a result of being denied a drug which is determined to be medically necessary may sue for injunctive or declaratory relief to review the director's decision to delete or suspend a drug from the list of contract drugs.

SEC. 67. Section 14105.41 of the Welfare and Institutions Code, as amended by Section 81 of Chapter 93 of the Statutes of 2000, is repealed.

SEC. 68. Section 14105.41 of the Welfare and Institutions Code, as amended by Section 80 of Chapter 93 of the Statutes of 2000, is amended to read:

14105.41. Moneys accruing to the department from contracts executed pursuant to Section 14105.33 shall be deposited in the Health Care Deposit Fund, and shall be subject to appropriation by the Legislature.

SEC. 69. Section 14105.42 of the Welfare and Institutions Code is amended to read:

14105.42. (a) The department shall report to the Legislature after the first three major therapeutic categories have been reviewed and contracts executed. The report shall include the estimated savings, number of manufacturers entering negotiations, number of contracts executed, number of drugs added and deleted, and impact on Medi-Cal beneficiaries and providers.

(b) The department shall report to the Legislature, through the annual budget process, on the cost-effectiveness of contracts executed pursuant to Section 14105.33.

SEC. 70. Section 14105.43 of the Welfare and Institutions Code is amended to read:

14105.43. (a) (1) Notwithstanding other provisions of this chapter, any drug which is approved by the federal Food and Drug Administration for use in the treatment of acquired immune deficiency syndrome (AIDS) or an AIDS-related condition shall be deemed to be approved for addition to the Medi-Cal list of contract drugs only for the purpose of treating AIDS or an AIDS-related condition, for the period prior to the completion of the procedures established pursuant to Section 14105.33.

(2) (A) In addition to any drug that is deemed to be approved pursuant to paragraph (1), any drug that meets any of the following criteria shall be a Medi-Cal benefit, subject to utilization controls:

(i) Any vaccine to protect against human immunodeficiency virus (HIV) infection.

(ii) Any antiviral agent, immune modulator, or other agent to be administered to persons who have been infected with human immunodeficiency virus to counteract the effects of that infection.

(iii) Any drug or biologic used to treat opportunistic infections associated with acquired immune deficiency syndrome, that have been found to be medically accepted indications and that has either been approved by the federal Food and Drug Administration or recognized for that use in one of the following:

(I) The American Medical Association Drug Evaluations.

(II) The United States Pharmacopoeia Dispensing Information.

(III) Two articles from peer reviewed medical journals that present data supporting the proposed use or uses as generally safe and effective.

(iv) Any drug or biologic used to treat the chemotherapy-induced suppression of the human immune system resulting from the treatment of acquired immune deficiency syndrome.

(3) The department shall add any drug deemed to be approved pursuant to paragraph (1) to the Medi-Cal list of contract drugs or allow the provision of the drug as a Medi-Cal benefit, subject to utilization controls, pursuant to paragraph (2), only if the manufacturer of the drug has executed a contract with the Centers for Medicare and Medicaid Services which provides for rebates in accordance with Section 1396r-8 of Title 42 of the United States Code.

(b) Any drug deemed to be approved pursuant to paragraph (1) of subdivision (a) shall be immediately added to the Medi-Cal list of contract drugs, and shall be exempt from the contract requirements of Section 14105.33.

(c) If it is determined pursuant to subdivision (c) of Section 14105.39 that a drug to which subdivision (a) applies should not be placed on the Medi-Cal list of contract drugs, that drug shall no longer be deemed to be approved for addition to the list of contract drugs pursuant to subdivision (a).

SEC. 71. Section 14105.436 is added to the Welfare and Institutions Code, to read:

14105.436. (a) Effective July 1, 2002, all pharmaceutical manufacturers shall provide to the department a state rebate, in addition to rebates pursuant to other provisions of state or federal law, for any drug products that have been added to the Medi-Cal list of contract drugs pursuant to Section 14105.43 or 14133.2 and reimbursed through the Medi-Cal outpatient fee-for-service drug program. The state rebate shall

be negotiated as necessary between the department and the pharmaceutical manufacturer. The negotiations shall take into account offers such as rebates, discounts, disease management programs, and other cost savings offerings and shall be retroactive to July 1, 2002.

(b) The department may use existing administrative mechanisms for any drug for which the department does not obtain a rebate pursuant to subdivision (a). The department may only use those mechanisms in the event that, by February 1, 2003, the manufacturer refuses to provide the additional rebate.

(c) In no event shall a beneficiary be denied continued use of a drug that is part of a prescribed therapy and that is the subject of an administrative mechanism pursuant to subdivision (b) until the prescribed therapy is no longer prescribed.

(d) This section 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. 72. Section 14105.45 of the Welfare and Institutions Code is amended to read:

14105.45. (a) The department shall establish a list of Maximum Allowable Ingredient Costs (MAIC) for drugs, which shall be published in provider bulletins. On the effective date of this section, MAICS listed in Title 22 of the California Code of Regulations shall be included in the list of MAICS. MAICS shall no longer be listed in regulations. The department shall repeal Section 51513.3 of Title 22 of the California Code of Regulations.

(b) The department shall update existing MAICS and establish additional MAICS in accordance with all of the following:

(1) The department shall base an MAIC on the mean of the wholesale selling prices of drugs generically equivalent to the innovator brand that are available in California from selected major wholesale drug distributors. For the purposes of this section, ''wholesale selling price'' means the price, including discounts and rebates, paid by a pharmacy to a wholesale drug distributor for a drug.

(2) The decision regarding therapeutic equivalency shall be based on the federal Food and Drug Administration determinations. For antacid drugs, therapeutic equivalency shall be determined by the department based on review of in vitro scientific data.

(3) The department shall request information from drug manufacturers regarding the availability of their products throughout the state to outpatient pharmacies through the usual and customary distribution channels in sufficient quantities to meet the needs of the Medi-Cal program.

(4) The department shall update MAICS at least every two months and notify Medi-Cal providers at least 30 days prior to the effective date of an MAIC.

(c) Notwithstanding the provisions of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, actions under this section shall not be subject to the Administrative Procedure Act, or to the review and approval of the Office of Administrative Law.

SEC. 73. Section 14105.46 is added to the Welfare and Institutions Code, to read:

14105.46. (a) For purposes of this section, the following definitions apply:

(1) ''Estimated acquisition cost'' means the department's best estimate of the price generally and currently paid by providers for a drug product sold by a particular manufacturer or principal labeler in a standard package.

(2) ''Legend'' means any drug whose labeling states ''Caution: Federal law prohibits dispensing without prescription'' or words of similar import.

(3) ''Nonlegend'' means any drug whose labeling does not contain the statement referenced in paragraph (2).

(4) ''Single-source,'' ''innovator multiple source,'' and ''noninnovator multiple source'' drugs have the same meaning as those terms are defined in Section 1396r-8(k)(7) of Title 42 of the United States.

(5) ''Average sales price'' means the price reported to the department as required by agreements between the State of California and the manufacturer.

(6) ''Average wholesale price'' means the price for a drug product listed in the department's price reference source.

(7) ''Direct price'' means the price for a drug product purchased directly from a drug manufacturer listed in the department's price reference source.

(b) The department shall establish the estimated acquisition cost of legend and nonlegend drugs as follows:

(1) For single-source and innovator multiple source drugs, the estimated acquisition cost shall be equal to the lower of the average sales price, as reported to the department by a drug manufacturer, and the average wholesale price minus 10 percent.

(2) For noninnovator multiple source drugs, the estimated acquisition cost shall be equal to the lower of the average sales price, as reported to the department by a drug manufacturer, and the average wholesale price minus 10 percent.

(c) Direct price shall not be used by the department to establish estimated acquisition cost.

(d) The reimbursement for legend and nonlegend drugs shall consist of the cost of the drug plus a professional fee for services.

SEC. 74. Section 14105.47 is added to the Welfare and Institutions Code, to read:

14105.47. (a) (1) The department shall establish a list of medical supplies. The list shall specify utilization controls to be applied to each medical supply product.

(2) The utilization controls specified shall include, but not be limited to, those provided by regulation of the department. The department shall repeal Section 59998 of Title 22 of the California Code of Regulations, which establishes requirements for medical supplies.

(3) The department shall notify providers at least 30 days prior to the effective date of a change in utilization controls.

(b) (1) The department shall establish a list of maximum allowable product costs (MAPCS) for medical supplies, which shall be published in provider bulletins.

(2) The department shall repeal the provisions of Section 51520.1 of Title 22 of the California Code of Regulations.

(3) The department shall update existing MAPCS and establish additional MAPCS in accordance with all of the following:

(A) In establishing the MAPCS, the director shall assure that eligible persons shall receive medical supply products that are available to the public generally, without discrimination or segregation based purely on economic disability.

(B) All related medical supply products within each particular medical supply type available for retail distribution shall be reviewed by the department in consultation with representatives from the California Association of Medical Product Suppliers and the California Pharmacists Association.

(C) The department shall base MAPCS on the mean of the wholesale selling price of related medical supply products that are available in California. For purposes of this section, ''wholesale selling price'' means the price, including discounts and rebates, paid by a provider to a wholesaler, distributor, or manufacturer for a medical supply product.

(D) The department shall notify Medi-Cal providers at least 30 days prior to the effective date of MAPCS.

(c) Notwithstanding the provisions of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of the Government Code, actions under this section shall not be subject to the Administrative Procedure Act or to the review and approval of the Office of Administrative Law.

SEC. 75. Section 14105.65 of the Welfare and Institutions Code is repealed.

SEC. 76. Section 14105.8 is added to the Welfare and Institutions Code, to read:

14105.8. (a) The department may enter into contracts with manufacturers of enteral formulae that can be used as a therapeutic regimen to prevent serious disability or death in patients with medically diagnosed conditions that preclude the full use of regular food, on a bid or nonbid basis. The department shall maintain a list of those products for which contracts have been executed. Rebates created by these contracts shall be managed through the department's drug rebate accounting system.

(b) For the purpose of this benefit, enteral formulae is defined as those products that have been classified by the Statistical Analysis Durable Medical Equipment Regional Carrier (SADMERC) into one of the product classifications used for reimbursement in the Medicare program. SADMERC classified enteral formulae, Category V: modular components do not meet the test as a replacement for regular food pursuant to subdivision (a) and shall not be a benefit of the Medi-Cal program, except that the Medi-Cal program may deem a SADMERC Category V classified enteral formulae as a benefit when the department determines that the use of the product is neither investigational nor experimental when used as a therapeutic regimen to prevent serious disability or death in patients with medically diagnosed conditions. Infant formulas and enteral formulae covered by the Woman, Infant and Children (WIC) program for individuals enrolled in WIC shall not be a benefit of the Medi-Cal program.

(c) In order that Medi-Cal beneficiaries may have access to a comprehensive range of enteral formulae pursuant to subdivision (a), the department shall ensure that there is representation on the list of both general use and specialized use enteral formulae. The Medi-Cal program may deem an enteral formulae not classified by SADMERC as a benefit if it meets the medical need of patients with medically diagnosed conditions that preclude the full use of regular food.

(d) In order to achieve maximum cost savings, the Legislature declares that an expedited process for contracts under this section is necessary. Therefore, contracts entered into on a nonbid basis shall be exempt from Chapter 2 (commencing with Section 10290) of Part 2 of Division 2 of the Public Contract Code.

(e) (1) A manufacturer of an enteral formulae denied a contract pursuant to this section may file an appeal of that decision with the director within 30 calendar days of the department's written decision.

(2) The director shall issue a final decision on the appeal within 60 calendar days of the postmark date of the appeal.

(f) Deletions made to the list of enteral formulae shall become effective no sooner than 30 days after publication of the changes in provider bulletins.

(g) Changes made to the list of enteral formulae under this or any other section are exempt from the requirements of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340), Chapter 4 (commencing with Section 11370), and Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code), and shall not be subject to the review and approval of the Office of Administrative Law.

(h) In no event shall a beneficiary be denied continued use of an enteral formulae, pursuant to subdivisions (b) and (j), that has been deleted from the list of enteral formulae. To be eligible for continuing care status under this subdivision, a beneficiary must be taking the enteral formulae product when the product is deleted. Additionally, the department shall have received a claim for the enteral formulae product with a date of service that is within 100 days prior to the date the product was deleted. A beneficiary shall remain eligible for continuing care status provided that a claim is submitted for the enteral formulae product in question at least every 100 days and the date of service of the claim is within 100 days of the date of service of the last claim submitted for the same enteral formulae product.

(i) The department shall provide individual notice to Medi-Cal beneficiaries at least 60 calendar days prior to the effective date of the deletion of any enteral formulae from the list of enteral formulae. The notice shall include a description of the beneficiary's right to a fair hearing and shall encourage the beneficiary to consult a physician to determine if an appropriate substitute enteral formulae is available from Medi-Cal.

(j) Enteral formulae authorized pursuant to subdivision (a) shall be available only through prior authorization. The department may designate those enteral formulae that are without a contract as not being a benefit of the Medi-Cal program, except in the case of continuing care as described in subdivision (h) of this section.

(k) Contracts executed pursuant to this section shall be confidential and shall be exempt from disclosure under the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code).

(*l*) (1) Manufacturers shall calculate and pay interest on late or unpaid rebates.

(2) Interest pursuant to paragraph (1) shall begin accruing 38 calendar days from the date of mailing of the quarterly invoice, including supporting utilization data sent to the manufacturer. Interest shall

continue to accrue until the date of mailing of the manufacturer's payment.

(3) Interest rates and calculations pursuant to paragraph (1) shall be identical and shall be equal to the drug rebate interest rates as determined by the federal Centers for Medicare and Medicaid Services' Medicaid Drug Rebate Program Releases or regulations.

(4) If the date of mailing of a state rebate payment is 69 days of more from the date of mailing of the invoice, including supporting utilization data sent to the manufacturer, the interest rate shall be as specified in paragraph (3), however the interest rate shall be increased by 10 percentage points.

(m) The department may adopt emergency regulations to implement this section 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).

SEC. 77. Section 14105.85 is added to the Welfare and Institutions Code, to read:

14105.85. Effective July 1, 2002, payment for enteral formulae dispensed by a pharmacy provider shall be based on the estimated acquisition cost for that product plus a percentage markup to be determined by the department in consultation with provider representatives from the California Association of Medical Product Suppliers and the California Pharmacists Association. The percentage markup shall consider the costs of handling, storage, delivery, and billing for those products. Any changes to the percentage markup may be implemented with 30-day notice to the provider community via a provider bulletin or other specific notification to providers.

SEC. 78. Section 14105.91 of the Welfare and Institutions Code is repealed.

SEC. 79. Section 14105.915 of the Welfare and Institutions Code is repealed.

SEC. 80. Section 14105.916 of the Welfare and Institutions Code is repealed.

SEC. 81. Section 14125 of the Welfare and Institutions Code is amended to read:

14125. The purpose of this article is to establish provider reimbursement rates for incontinence medical supplies covered by the Medi-Cal program. Reimbursement for incontinence medical supplies shall consist of the weighted average of the negotiated contract prices within each product category, plus a markup fee equal to 38 percent of the resulting adjusted contract price.

SEC. 83. 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 Centers for Medicare and Medicaid Services 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.

(ab) Purchase of prescribed enteral formulae is covered, subject to the Medi-Cal list of enteral formulae and utilization controls.

(ac) Diabetic testing supplies are covered when provided by a pharmacy, subject to utilization controls.

SEC. 84. Section 14132.26 of the Welfare and Institutions Code is amended to read:

14132.26. (a) The department shall develop a program that requires a waiver of federal law to test the efficacy of providing an assisted living benefit to beneficiaries under the Medi-Cal program. Assisted living benefits shall include, but are not limited to, the care and supervision activities specified in Section 1569.2 of the Health and Safety Code and Section 87101 of Title 22 of the California Code of Regulations, and other health-related services. The program developed pursuant to this section shall be known as the waiver program for purposes of this section. The department shall submit any necessary waiver applications or modifications to the medicaid state plan to the Health Care Financing Administration to implement the waiver program, and shall implement the waiver program only to the extent federal financial participation is available.

(b) The department shall develop the waiver program in conjunction with other state departments, consumers, consumer advocates, housing and service providers, and experts in the fields of gerontology, geriatric health, nursing services, and independent living.

(c) The assisted living benefit shall be designed to provide eligible individuals with a range of services that enable them to remain in the least restrictive and most homelike environment while receiving the medical and personal care necessary to protect their health and well-being. Benefits provided pursuant to this waiver program shall include only those not otherwise available under the state plan, and may include, but are not limited to, medicine management, coordination with a primary health care provider, and case management.

(d) (1) Eligible individuals shall be those who are eligible for the Medi-Cal program and are determined by the department to be eligible for placement in a nursing facility, as defined under subdivisions (c) and

(d) of Section 1250 of the Health and Safety Code. Eligibility shall be based on an assessment of an individual's ability to perform functional and instrumental activities of daily living, as well as the individual's medical diagnosis and prognosis, and other criteria, including other Medi-Cal services that the beneficiary is receiving, as specified in the waiver.

(2) An eligible individual shall participate in the waiver program only if he or she is fully informed of the program and the nature of the assisted living benefit and indicates in writing his or her choice to participate.

(e) (1) The waiver program shall test the effectiveness of providing a Medi-Cal assisted living benefit through two service delivery approaches, as specified in paragraphs (2) and (3).

(2) Under the first model, an assisted living benefit shall be provided to residents of licensed residential care facilities. Facility participation in the program shall be determined by the department in conjunction with the State Department of Social Services and in accordance with the criteria for participation specified in the waiver. Under this model the facility operator shall be responsible for the provision of services allowed under the benefit, either directly or through contracts with other provider agencies, as permitted and specified in the waiver. During participation in the waiver program, residential care facilities shall comply with all terms and conditions of the waiver. The department and the State Department of Social Services, may, as determined necessary and appropriate, waive provisions contained in Division 2 (commencing with Section 1200) of the Health and Safety Code, subdivision (h) of Section 14132.95, and Title 22 of the California Code of Regulations for facilities providing services to waiver program participants.

(3) Under the second model, an assisted living benefit shall be provided to residents in publicly funded senior and disabled housing projects. Under this model an independent agency, pursuant to a contract with the department, shall be responsible for the provision of case management and other services to eligible individuals, as specified in the waiver.

(f) The department shall evaluate the effectiveness of the waiver program.

(1) The evaluation shall include, but not be limited to, participant satisfaction, health, and safety, the quality of life of the participant receiving the assisted living benefit, and demonstration of the cost neutrality of the waiver program as specified in federal guidelines.

(2) The evaluation shall estimate the projected savings, if any, in the budgets of state and local governments if the program was expanded statewide.

(3) The evaluation shall be submitted to the appropriate policy and fiscal committees of the Legislature on or before January 1, 2003.

(g) The department shall limit the number of participants in the waiver program during the initial three years of its operation to a number that will be statistically significant for purposes of the program evaluation and that meets any requirements of the federal Health Care Financing Administration, including a request to waive statewide implementation requirements for the waiver program during the initial years of evaluation.

(h) In implementing this section, the department may enter into contracts for the provision of essential administrative and other services. Contracts entered into under this section may be on a noncompetitive bid basis, and shall be exempt from the requirements of Chapter 2 (commencing with Section 10290) of Part 2 of Division 2 of the Public Contract Code.

(i) The department shall not implement the waiver program specified in subdivision (a) if the benefits provided pursuant to the waiver program will result in additional costs to the Medi-Cal program.

(j) The waiver program shall be developed and implemented only to the extent that funds are appropriated or otherwise available for that purpose.

SEC. 85. Section 14132.73 is added to the Welfare and Institutions Code, to read:

14132.73. The State Department of Health Services shall allow psychiatrists to receive fee-for-service Medi-Cal reimbursement for services provided through telemedicine until June 30, 2004, or until the State Department of Mental Health and mental health plans, in collaboration with stakeholders, develop a method for reimbursing psychiatric services provided through telemedicine that is administratively feasible for the mental health plans, primary care providers, and psychiatrists providing the services, whichever occurs later.

SEC. 85.5. Section 14132.88 of the Welfare and Institutions Code is amended to read:

14132.88. (a) Notwithstanding subdivision (h) of Section 14132 and to the extent funds are made available in the annual Budget Act for this purpose, the following are covered benefits for beneficiaries 21 years of age or older under this chapter:

(1) One dental prophylaxis cleaning per year.

(2) One initial dental examination by a dentist.

(b) The following are covered benefits for beneficiaries under 21 years of age under this chapter:

(1) Two dental prophylaxis cleanings per year.

(2) Two periodic dental examinations per year.

SEC. 86. Section 14132.95 of the Welfare and Institutions Code is amended to read:

14132.95. (a) Personal care services, when provided to a categorically needy person as defined in Section 14050.1 is a covered benefit to the extent federal financial participation is available if these services are:

(1) Provided in the beneficiary's home and other locations as may be authorized by the director subject to federal approval.

(2) Authorized by county social services staff in accordance with a plan of treatment.

(3) Provided by a qualified person.

(4) Provided to a beneficiary who has a chronic, disabling condition that causes functional impairment that is expected to last at least 12 consecutive months or that is expected to result in death within 12 months and who is unable to remain safely at home without the services described in this section.

(b) The department shall seek federal approval of a state plan amendment necessary to include personal care as a medicaid service pursuant to subdivision (f) of Section 440.170 of Title 42 of the Code of Federal Regulations. For any persons who meet the criteria specified in subdivision (a) or (p), but for whom federal financial participation is not available, eligibility shall be available pursuant to Article 7 (commencing with Section 12300) of Chapter 3, if otherwise eligible.

(c) Subdivision (a) shall not be implemented unless the department has obtained federal approval of the state plan amendment described in subdivision (b), and the Department of Finance has determined, and has informed the department in writing, that the implementation of this section will not result in additional costs to the state relative to state appropriation for in-home supportive services under Article 7 (commencing with Section 12300) of Chapter 3, in the 1992–93 fiscal year.

(d) (1) For purposes of this section, personal care services shall mean all of the following:

(A) Assistance with ambulation.

(B) Bathing, oral hygiene and grooming.

(C) Dressing.

(D) Care and assistance with prosthetic devices.

(E) Bowel, bladder, and menstrual care.

(F) Skin care.

(G) Repositioning, range of motion exercises, and transfers.

(H) Feeding and assurance of adequate fluid intake.

(I) Respiration.

(J) Paramedical services.

(K) Assistance with self-administration of medications.

(2) Ancillary services including meal preparation and cleanup, routine laundry, shopping for food and other necessities, and domestic

services may also be provided as long as these ancillary services are subordinate to personal care services. Ancillary services may not be provided separately from the basic personal care services.

(e) (1) (A) After consulting with the State Department of Social Services, the department shall adopt emergency regulations to establish the amount, scope, and duration of personal care services available to persons described in subdivision (a) in the fiscal year whenever the department determines that General Fund expenditures for personal care services provided under this section and expenditures of both General Fund moneys and federal funds received under Title XX of the federal Social Security Act for services pursuant to Article 7 (commencing with Section 12300) of Chapter 3, are expected to exceed the General Fund appropriation and the federal appropriation under Title XX of the federal Social Security Act provided for the 1992–93 fiscal year pursuant to Article 7 (commencing with Section 12300) of Chapter 3, as it read on June 30, 1992, as adjusted for caseload growth or as increased in the Budget Act or appropriated by statute. At least 30 days prior to filing these regulations with the Secretary of State, the department shall give notice of the expected content of these regulations to the fiscal committees of both houses of the Legislature.

(B) In establishing the amount, scope, and duration of personal care services, the department shall ensure that General Fund expenditures for personal care services provided for under this section and expenditures of both General Fund moneys and federal funds received under Title XX of the federal Social Security Act for services pursuant to Article 7 (commencing with Section 12300) of Chapter 3, do not exceed the General Fund appropriation and the federal appropriation under Title XX of the federal Social Security Act provided for the 1992–93 fiscal year pursuant to Article 7 (commencing with Section 12300) of Chapter 3, as it read on June 30, 1992, as adjusted for caseload growth or as increased in the Budget Act or appropriated by statute.

(C) For purposes of this subdivision, ''caseload growth'' means an adjustment factor determined by the department based on (1) growth in the number of persons eligible for benefits under Chapter 3 (commencing with Section 12000) on the basis of their disability, (2) the average increase in the number of hours in the program established pursuant to Article 7 (commencing with Section 12300) of Chapter 3 in the 1988–89 to 1992–93 fiscal years, inclusive, due to the level of impairment, and (3) any increase in program costs that is required by an increase in the mandatory minimum wage.

(2) In establishing the amount, scope, and duration of personal care services pursuant to this subdivision, the department may define and take into account, among other things:

(A) The extent to which the particular personal care services are essential or nonessential.

(B) Standards establishing the medical necessity of the services to be provided.

(C) Utilization controls.

(D) A minimum number of hours of personal care services that must first be assessed as needed as a condition of receiving personal care services pursuant to this section.

The level of personal care services shall be established so as to avoid, to the extent feasible within budgetary constraints, medical out-of-home placements.

(3) To the extent that General Fund expenditures for services provided under this section and expenditures of both General Fund moneys and federal funds received under Title XX of the federal Social Security Act for services pursuant to Article 7 (commencing with Section 12300) of Chapter 3 in the 1992–93 fiscal year, adjusted for caseload growth, exceed General Fund expenditures for services provided under this section and expenditures of both General Fund moneys and federal funds received under Title XX of the federal Social Security Act for services pursuant to Article 7 (commencing with Section 12300) of Chapter 3 in any fiscal year, the excess of these funds shall be expended for any purpose as directed in the Budget Act or as otherwise statutorily disbursed by the Legislature.

(f) Services pursuant to this section shall be rendered, under the administrative direction of the State Department of Social Services, in the manner authorized in Article 7 (commencing with Section 12300) of Chapter 3, for the In-Home Supportive Services program. A provider of personal care services shall be qualified to provide the service and shall be a person other than a member of the family. For purposes of this section, a family member means a parent of a minor child or a spouse.

(g) A beneficiary who is eligible for assistance under this section shall receive services that do not exceed 283 hours per month of personal care services.

(h) Personal care services shall not be provided to residents of facilities licensed by the department, and shall not be provided to residents of a community care facility or a residential care facility for the elderly licensed by the Community Care Licensing Division of the State Department of Social Services.

(i) Subject to any limitations that may be imposed pursuant to subdivision (e), determination of need and authorization for services shall be performed in accordance with Article 7 (commencing with Section 12300) of Chapter 3.

(j) (1) To the extent permitted by federal law, reimbursement rates for personal care services shall be equal to the rates in each county for

the same mode of services in the In-Home Supportive Services program pursuant to Article 7 (commencing with Section 12300) of Chapter 3, plus any increase provided in the annual Budget Act for personal care services rates or included in a county budget pursuant to paragraph (2).

(2) (A) The department shall establish a provider reimbursement rate methodology to determine payment rates for the individual provider mode of service that does all of the following:

(i) Is consistent with the functions and duties of entities created pursuant to Section 12301.6.

(ii) Makes any additional expenditure of state general funds subject to appropriation in the annual Budget Act.

(iii) Permits county-only funds to draw down federal financial participation consistent with federal law.

(B) This ratesetting method shall be in effect in time for any rate increases to be included in the annual Budget Act.

(C) The department may, in establishing the ratesetting method required by subparagraph (A), do both of the following:

(i) Deem the market rate for like work in each county, as determined by the Employment Development Department, to be the cap for increases in payment rates for individual practitioner services.

(ii) Provide for consideration of county input concerning the rate necessary to ensure access to services in that county.

(D) If an increase in individual practitioner rates is included in the annual Budget Act, the state-county sharing ratio shall be as established in Section 12306. If the annual Budget Act does not include an increase in individual practitioner rates, a county may use county-only funds to meet federal financial participation requirements consistent with federal law.

(3) (A) By November 1, 1993, the department shall submit a state plan amendment to the federal Health Care Financing Administration to implement this subdivision. To the extent that any element or requirement of this subdivision is not approved, the department shall submit a request to the federal Health Care Financing Administration for any waivers as would be necessary to implement this subdivision.

(B) The provider reimbursement ratesetting methodology authorized by the amendments to this subdivision in the 1993–94 Regular Session of the Legislature shall not be operative until all necessary federal approvals have been obtained.

(k) (1) The State Department of Social Services shall, by September 1, 1993, notify the following persons that they are eligible to participate in the personal care services program:

(A) Persons eligible for services pursuant to the Pickle Amendment, as adopted October 28, 1976.

(B) Persons eligible for services pursuant to subsection (c) of Section 1383c of Title 42 of the United States Code.

(2) The State Department of Social Services shall, by September 1, 1993, notify persons to whom paragraph (1) applies and who receive advance payment for in-home supportive services that they will qualify for services under this section without a share of cost if they elect to accept payment for services on an arrears rather than an advance payment basis.

(*l*) An individual who is eligible for services subject to the maximum amount specified in subdivision (b) of Section 12303.4 shall be given the option of hiring his or her own provider.

(m) The county welfare department shall inform in writing any individual who is potentially eligible for services under this section of his or her right to the services.

(n) It is the intent of the Legislature that this entire section be an inseparable whole and that no part of it be severable. If any portion of this section is found to be invalid, as determined by a final judgment of a court of competent jurisdiction, this section shall become inoperative.

(o) Paragraphs (2) and (3) of subdivision (a) shall be implemented so as to conform to federal law authorizing their implementation.

(p) (1) Personal care services shall be provided as a covered benefit to a medically needy aged, blind, or disabled person, as defined in subdivision (a) of Section 14051, to the same extent and under the same requirements as they are provided under subdivision (a) of this section to a categorically needy, aged, blind, or disabled person, as defined in subdivision (a) of Section 14050.1, and to the extent that federal financial participation is available.

(2) The department shall seek federal approval of a state plan amendment necessary to include personal care services described in paragraph (1) as a medicaid service pursuant to subdivision (f) of Section 440.170 of Title 42 of the Code of Federal Regulations.

(3) In the event that the Department of Finance determines that expenditures of both General Fund moneys for personal care services provided under this subdivision to medically needy aged, blind, or disabled persons together with expenditures of both General Fund moneys and federal funds received under Title XX of the federal Social Security Act for all aged, blind, and disabled persons receiving in-home supportive services pursuant to Article 7 (commencing with Section 12300) of Chapter 3, in the 2000–01 fiscal year or in any subsequent fiscal year, are expected to exceed the General Fund appropriation and the federal appropriation received under Title XX of the federal Social Security Act for expenditures for all aged, blind, and disabled persons receiving in-home supportive services provided in the 1999–2000 fiscal year pursuant to Article 7 (commencing with Section 12300) of Chapter

3, as it read on June 30, 1998, as adjusted for caseload growth or as changed in the Budget Act or by statute or regulation, then this subdivision shall cease to be operative on the first day of the month that begins after the expiration of a period of 30 days subsequent to a notification in writing by the Director of the Department of Finance to the chairperson of the committee in each house that considers appropriations, the chairpersons of the committees and the appropriate subcommittees in each house that consider the State Budget, and the Chairperson of the Joint Legislative Budget Committee.

(4) Solely for purposes of paragraph (3), caseload growth means an adjustment factor determined by the department based on:

(A) Growth in the number of persons eligible for benefits under Chapter 3 (commencing with Section 12000) on the basis of their disability.

(B) The average increase in the number of hours in the program established pursuant to Article 7 (commencing with Section 12300) of Chapter 3 in the 1994–95 to 1998–99 fiscal years, inclusive, due to the level of impairment.

(C) Any increase in program cost that is required by an increase in hourly costs pursuant to the Budget Act or statute.

(5) In the event of a final judicial determination by any court of appellate jurisdiction or a final determination by the Administrator of the federal Centers for Medicare and Medicaid Services that personal care services must be provided to any medically needy person who is not aged, blind, or disabled, then this subdivision shall cease to be operative on the first day of the first month that begins after the expiration of a period of 30 days subsequent to a notification in writing by the Director of Finance to the chairperson of the committee in each house that considers appropriations, the chairpersons of the committees and the appropriate subcommittees in each house that consider the State Budget, and the Chairperson of the Joint Legislative Budget Committee.

(6) If this subdivision ceases to be operative, all aged, blind, and disabled persons who would have received or been eligible to receive in-home supportive services pursuant to Article 7 (commencing with Section 12300) of Chapter 3, but for receiving services under this subdivision, shall be eligible immediately upon this section becoming inoperative for services pursuant to Article 7 (commencing with Section 12300) of Chapter 3.

(7) The department shall implement this subdivision on April 1, 1999, but only if the department has obtained federal approval of the state plan amendments described in paragraph (2) of this subdivision.

SEC. 87. Section 14150 is added to the Welfare and Institutions Code, to read:

14150. Within 60 calendar days of the date that the annual Budget Act is chaptered, the department shall notify the chairpersons of the fiscal committees of each house of the Legislature, the Chairperson and the Vice Chairperson of the Joint Legislative Budget Committee, and appropriate county representatives if the department plans to withhold and not allocate any of the baseline allocation for county Medi-Cal eligibility activities that are appropriated for Medi-Cal administration.

SEC. 88. Section 14163 of the Welfare and Institutions Code is amended to read:

14163. (a) For purposes of this section, the following definitions shall apply:

(1) ''Public entity'' means a county, a city, a city and county, the State of California, the University of California, a local health care district, a local health authority, or any other political subdivision of the state.

(2) ''Hospital'' means a health facility that is licensed pursuant to Chapter 2 (commencing with Section 1250) of Division 2 of the Health and Safety Code to provide acute inpatient hospital services, and includes all components of the facility.

(3) ''Disproportionate share hospital'' means a hospital providing acute inpatient services to Medi-Cal beneficiaries that meets the criteria for disproportionate share status relating to acute inpatient services set forth in Section 14105.98.

(4) ''Disproportionate share list'' means the annual list of disproportionate share hospitals for acute inpatient services issued by the department pursuant to Section 14105.98.

(5) ''Fund'' means the Medi-Cal Inpatient Payment Adjustment Fund.

(6) ''Eligible hospital'' means, for a particular state fiscal year, a hospital on the disproportionate share list that is eligible to receive payment adjustment amounts under Section 14105.98 with respect to that state fiscal year.

(7) ''Transfer year'' means the particular state fiscal year during which, or with respect to which, public entities are required by this section to make an intergovernmental transfer of funds to the Controller.

(8) ''Transferor entity'' means a public entity that, with respect to a particular transfer year, is required by this section to make an intergovernmental transfer of funds to the Controller.

(9) ''Transfer amount'' means an amount of intergovernmental transfer of funds that this section requires for a particular transferor entity with respect to a particular transfer year.

(10) ''Intergovernmental transfer'' means a transfer of funds from a public entity to the state, that is local government financial participation in Medi-Cal pursuant to the terms of this section.

(11) ''Licensee'' means an entity that has been issued a license to operate a hospital by the department.

(12) ''Annualized Medi-Cal inpatient paid days'' means the total number of Medi-Cal acute inpatient hospital days, regardless of dates of service, for which payment was made by or on behalf of the department to a hospital, under present or previous ownership, during the most recent calendar year ending prior to the beginning of a particular transfer year, including all Medi-Cal acute inpatient covered days of care for hospitals that are paid on a different basis than per diem payments.

(13) ''Medi-Cal acute inpatient hospital day'' means any acute inpatient day of service attributable to patients who, for those days, were eligible for medical assistance under the California state plan, including any day of service that is reimbursed on a basis other than per diem payments.

(14) ''OBRA 1993 payment limitation'' means the hospital-specific limitation on the total annual amount of payment adjustments to each eligible hospital under the payment adjustment program that can be made with federal financial participation under Section 1396r-4(g) of Title 42 of the United States Code as implemented pursuant to the Medi-Cal State Plan.

(b) The Medi-Cal Inpatient Payment Adjustment Fund is hereby created in the State Treasury. Notwithstanding Section 13340 of the Government Code, the fund shall be continuously appropriated to, and under the administrative control of, the department for the purposes specified in subdivision (d). The fund shall consist of the following:

(1) Transfer amounts collected by the Controller under this section, whether submitted by transferor entities pursuant to applicable provisions of this section or obtained by offset pursuant to subdivision (j).

(2) Any other intergovernmental transfers deposited in the fund, as permitted by Section 14164.

(3) Any interest that accrues with respect to amounts in the fund.

(c) Moneys in the fund, which shall not consist of any state general funds, shall be used as the source for the nonfederal share of payments to hospitals pursuant to Section 14105.98. Moneys shall be allocated from the fund by the department and matched by federal funds in accordance with customary Medi-Cal accounting procedures, and used to make payments pursuant to Section 14105.98.

(d) Except as otherwise provided in Section 14105.98 or in any provision of law appropriating a specified sum of money to the department for administering this section and Section 14105.98, moneys in the fund shall be used only for the following:

(1) Payments to hospitals pursuant to Section 14105.98.

(2) Transfers to the Health Care Deposit Fund as follows:

(A) In the amount of two hundred thirty-nine million seven hundred fifty-seven thousand six hundred ninety dollars ($239,757,690) for the 1994–95 and 1995–96 fiscal years.

(B) In the amount of two hundred twenty-nine million seven hundred fifty-seven thousand six hundred ninety dollars ($229,757,690) for the 1996–97 fiscal year.

(C) In the amount of one hundred fifty-four million seven hundred fifty-seven thousand six hundred ninety dollars ($154,757,690) for the 1997–98 fiscal year.

(D) In the amount of one hundred fourteen million seven hundred fifty-seven thousand six hundred ninety dollars ($114,757,690) for the 1998–99 fiscal year.

(E) (i) In the amount of eighty-four million seven hundred fifty-seven thousand six hundred ninety dollars ($84,757,690) for the 1999–2000 fiscal year.

(ii) It is the intent of the Legislature that the economic benefit of any reduction in the amount transferred, or to be transferred, to the Health Care Deposit Fund pursuant to this subdivision for the 1999–2000 fiscal year, as compared to the amount so transferred for the 1998–99 fiscal year, be allocated equally between public and nonpublic disproportionate share hospitals. To implement the reduction in clause (i) the department shall, by June 30, 2000, adjust the calculations in Section 14105.98 in order to allocate the funds in accordance with this clause.

(F) In the amount of twenty-nine million seven hundred fifty-seven thousand six hundred ninety dollars ($29,757,690) for the 2000–01 fiscal year and the 2001–02 fiscal year.

(G) In the amount of eighty-five million dollars ($85,000,000) for the 2002–03 fiscal year and each fiscal year thereafter.

(H) The transfers from the fund shall be made in six equal monthly installments to the Medi-Cal local assistance appropriation item (Item 4260-101-0001 of the annual Budget Act) in support of Medi-Cal expenditures. The first installment shall accrue in October of each transfer year, and all other installments shall accrue monthly thereafter from November through March.

(e) For the 1991–92 state fiscal year, the department shall determine, no later than 70 days after the enactment of this section, the transferor entities for the 1991–92 transfer year. To make this determination, the department shall utilize the disproportionate share list for the 1991–92 fiscal year issued by the department pursuant to paragraph (1) of subdivision (f) of Section 14105.98. The department shall identify each eligible hospital on the list for which a public entity is the licensee as of July 1, 1991. The public entity that is the licensee of each identified eligible hospital shall be a transferor entity for the 1991–92 transfer year.

(f) The department shall determine, no later than 70 days after the enactment of this section, the transfer amounts for the 1991–92 transfer year.

The transfer amounts shall be determined as follows:

(1) The eligible hospitals for 1991–92 shall be identified. For each hospital, the applicable total per diem payment adjustment amount under Section 14105.98 for the 1991–92 transfer year shall be computed. This amount shall be multiplied by 80 percent of the eligible hospital's annualized Medi-Cal inpatient paid days as determined from all Medi-Cal paid claims records available through April 1, 1991. The products of these calculations for all eligible hospitals shall be added together to determine an aggregate sum for the 1991–92 transfer year.

(2) The eligible hospitals for 1991–92 involving transferor entities as licensees shall be identified. For each hospital, the applicable total per diem payment adjustment amount under Section 14105.98 for the 1991–92 transfer year shall be computed. This amount shall be multiplied by 80 percent of the eligible hospital's annualized Medi-Cal inpatient paid days as determined from all Medi-Cal paid claims records available through April 1, 1991. The products of these calculations for all eligible hospitals with transferor entities as licensees shall be added together to determine an aggregate sum for the 1991–92 transfer year.

(3) The aggregate sum determined under paragraph (1) shall be divided by the aggregate sum determined under paragraph (2), yielding a factor to be utilized in paragraph (4).

(4) The factor determined in paragraph (3) shall be multiplied by the amount determined for each hospital under paragraph (2). The product of this calculation for each hospital in paragraph (2) shall be divided by 1.771, yielding a transfer amount for the particular transferor entity for the transfer year.

(g) For the 1991–92 transfer year, the department shall notify each transferor entity in writing of its applicable transfer amount or amounts.

(h) For the 1992–93 transfer year and subsequent transfer years, transfer amounts shall be determined in the same procedural manner as set forth in subdivision (f), except:

(1) The department shall use all of the following:

(A) The disproportionate share list applicable to the particular transfer year to determine the eligible hospitals.

(B) The payment adjustment amounts calculated under Section 14105.98 for the particular transfer year. These amounts shall take into account any projected or actual increases or decreases in the size of the payment adjustment program as are required under Section 14105.98 for the particular year in question, including any decreases resulting from the application of the OBRA 1993 payment limitation. The department may issue interim, revised, and supplemental transfer requests as

necessary and appropriate to address changes in payment adjustment levels that occur under Section 14105.98. All transfer requests, or adjustments thereto, issued to transferor entities by the department shall meet the requirements set forth in subdivision (i).

(C) Data regarding annualized Medi-Cal inpatient paid days for the most recent calendar year ending prior to the beginning of the particular transfer year, as determined from all Medi-Cal paid claims records available through April 1 preceding the particular transfer year.

(D) The status of public entities as licensees of eligible hospitals as of July 1 of the particular transfer year.

(E) For the 1993–94 transfer year and subsequent transfer years, the divisor to be used for purposes of the calculation referred to in paragraph (4) of subdivision (f) shall be determined by the department. The divisor shall be calculated to ensure that the appropriate amount of transfers from transferor entities are received into the fund to satisfy the requirements of Section 14105.98, exclusive of the amounts described in paragraph (2) of this subdivision, and to satisfy the requirements of paragraph (2) of subdivision (d), for the particular transfer year. For the 1993–94 transfer year, the divisor shall be 1.742.

(F) The following provisions shall apply for certain transfer amounts relating to nonsupplemental payments under Section 14105.98:

(i) For the 1998–99 transfer year, transfer amounts shall be determined as though the payment adjustment amounts arising pursuant to subdivision (ag) of Section 14105.98 were increased by the amounts paid or payable pursuant to subdivision (af) of Section 14105.98.

(ii) Any transfer amounts paid by a transferor entity pursuant to subparagraph (C) of paragraph (2) shall serve as credit for the particular transferor entity against an equal amount of its transfer obligation for the 1998–99 transfer year.

(iii) For the 1999–2000 transfer year, transfer amounts shall be determined as though the amount to be transferred to the Health Care Deposit Fund, as referred to in paragraph (2) of subdivision (d), were reduced by 28 percent.

(2) (A) Except as provided in subparagraphs (B), (C), and (D), for the 1993–94 transfer year and subsequent transfer years, transfer amounts shall be increased for the particular transfer year in the amounts necessary to fund the nonfederal share of the total supplemental payment adjustment amounts of all types that arise under Section 14105.98. These increases shall be paid only by those transferor entities that are licensees of hospitals that are projected to receive some or all of the particular supplemental payments, and the increases shall be paid by the transferor entities on a pro rata basis in connection with the particular supplemental payments. For purposes of this paragraph, supplemental payment adjustment amounts shall be deemed to arise for the particular

transfer year as of the date specified in Section 14105.98. Transfer amounts to fund the nonfederal share of the payments shall be paid for the particular transfer year within 20 days after the department notifies the transferor entity in writing of the additional transfer amount to be paid.

(B) For the 1995–96 transfer year, the nonfederal share of the secondary supplemental payment adjustments described in paragraph (9) of subdivision (y) of Section 14105.96 shall be funded as follows:

(i) Ninety-nine percent of the nonfederal share shall be funded by a transfer from the University of California.

(ii) One percent of the nonfederal share shall be funded by transfers from those public entities that are the licensees of the hospitals included in the ''other public hospitals'' group referred to in clauses (ii) and (iii) of subparagraph (B) of paragraph (9) of subdivision (y) of Section 14105.98. The transfer responsibilities for this 1 percent shall be allocated to the particular public entities on a pro rata basis, based on a formula or formulae customarily used by the department for allocating transfer amounts under this section. The formula or formulae shall take into account, through reallocation of transfer amounts as appropriate, the situation of hospitals whose secondary supplemental payment adjustments are restricted due to the application of the limitation set forth in clause (v) of subparagraph (B) of paragraph (9) of subdivision (y) of Section 14105.98.

(iii) All transfer amounts under this subparagraph shall be paid by the particular transferor entities within 30 days after the department notifies the transferor entity in writing of the transfer amount to be paid.

(C) For the 1997–98 transfer year, transfer amounts to fund the nonfederal share of the supplemental payment adjustments described in subdivision (af) of Section 14105.98 shall be funded by a transfer from the County of Los Angeles.

(D) (i) For the 1998–99 transfer year, transfer amounts to fund the nonfederal share of the supplemental payment adjustment amounts arising under subdivision (ah) of Section 14105.98 shall be increased as set forth in clause (ii).

(ii) The transfer amounts otherwise calculated to fund the supplemental payment adjustments referred to in clause (i) shall be increased on a pro rata basis by an amount equal to 28 percent of the amount to be transferred to the Health Care Deposit Fund for the 1999–2000 fiscal year, as referred to in paragraph (2) of subdivision (d).

(3) The department shall prepare preliminary analyses and calculations regarding potential transfer amounts, and potential transferor entities shall be notified by the department of estimated transfer amounts as soon as reasonably feasible regarding any particular transfer year. Written notices of transfer amounts shall be issued by the

department as soon as possible with respect to each transfer year. All state agencies shall take all necessary steps in order to supply applicable data to the department to accomplish these tasks. The Office of Statewide Health Planning and Development shall provide to the department quarterly access to the edited and unedited confidential patient discharge data files for all Medi-Cal eligible patients. The department shall maintain the confidentiality of that data to the same extent as is required of the Office of Statewide Health Planning and Development. In addition, the Office of Statewide Health Planning and Development shall provide to the department, not later than March 1 of each year, the data specified by the department, as the data existed on the statewide database file as of February 1 of each year, from all of the following:

(A) Hospital annual disclosure reports, filed with the Office of Statewide Health Planning and Development pursuant to Section 443.31 or 128735 of the Health and Safety Code, for hospital fiscal years that ended during the calendar year ending 13 months prior to the applicable February 1.

(B) Annual reports of hospitals, filed with the Office of Statewide Health Planning and Development pursuant to Section 439.2 or 127285 of the Health and Safety Code, for the calendar year ending 13 months prior to the applicable February 1.

(C) Hospital patient discharge data reports, filed with the Office of Statewide Health Planning and Development pursuant to subdivision (g) of Section 443.31 or 128735 of the Health and Safety Code, for the calendar year ending 13 months prior to the applicable February 1.

(D) Any other materials on file with the Office of Statewide Health Planning and Development.

(4) Transfer amounts calculated by the department may be increased or decreased by a percentage amount consistent with the Medi-Cal state plan.

(5) For the 1993–94 fiscal year, the transfer amount that would otherwise be required from the University of California shall be increased by fifteen million dollars ($15,000,000).

(6) Notwithstanding any other provision of law, except for subparagraph (D) of paragraph (2), the total amount of transfers required from the transferor entities for any particular transfer year shall not exceed the sum of the following:

(A) The amount needed to fund the nonfederal share of all payment adjustment amounts applicable to the particular payment adjustment year as calculated under Section 14105.98. Included in the calculations for this purpose shall be any decreases in the program as a whole, and for individual hospitals, that arise due to the provisions of Section 1396r-4(f) or (g) of Title 42 of the United States Code.

(B) The amount needed to fund the transfers to the Health Care Deposit Fund, as referred to in subdivision (d).

(7) (A) Except as provided in subparagraphs (B) and (C) and in paragraph (2) of subdivision (j), and except for a prudent reserve not to exceed two million dollars ($2,000,000) in the Medi-Cal Inpatient Payment Adjustment Fund, any amounts in the fund, including interest that accrues with respect to the amounts in the fund, that are not expended, or estimated to be required for expenditure, under Section 14105.98 with respect to a particular transfer year shall be returned on a pro rata basis to the transferor entities for the particular transfer year within 120 days after the department determines that the funds are not needed for an expenditure in connection with the particular transfer year.

(B) The department shall determine the interest amounts that have accrued in the fund from its inception through June 30, 1995, and, no later than January 1, 1996, shall distribute these interest amounts to transferor entities:

(C) With respect to those particular amounts in the fund resulting solely from the provisions of subparagraph (D) of paragraph (2), the department shall determine by September 30, 1999, whether these particular amounts exceed 28 percent of the amount to be transferred to the Health Care Deposit Fund for the 1999–2000 fiscal year, as referred to in paragraph (2) of subdivision (d). Any excess amount so determined shall be returned to the particular transferor entities on a pro rata basis no later than October 31, 1999.

(D) Regarding any funds returned to a transferor entity under subparagraph (A) or (C), or interest amounts distributed to a transferor entity under subparagraph (B), the department shall provide to the transferor entity a written statement that explains the basis for the particular return or distribution of funds and contains the general calculations used by the department in determining the amount of the particular return or distribution of funds.

(i) (1) For the 1991–92 transfer year, each transferor entity shall pay its transfer amount or amounts to the Controller, for deposit in the fund, in eight equal installments.

(2) (A) Except as provided in subparagraphs (B) and (C), for the 1992–93 transfer year and subsequent transfer years, each transferor entity shall pay its transfer amount or amounts to the Controller, for deposit in the fund, in eight equal installments. However, for the 1997–98 and subsequent transfer years, each transferor entity shall pay its transfer amount or amounts to the Controller, for deposit in the fund, in the form of periodic installments according to a timetable established by the department. The timetable shall be structured to effectuate, on a reasonable basis, the prompt distribution of all nonsupplemental

payment adjustments under Section 14105.98, and transfers to the Health Care Deposit Fund under subdivision (d).

(B) For the 1994–95 transfer year, each transferor entity shall pay its transfer amount or amounts to the Controller, for deposit in the fund, in five equal installments.

(C) For the 1995–96 transfer year, each transferor entity shall pay its transfer amount or amounts to the Controller, for deposit in the fund, in five equal installments.

(D) Except as otherwise specifically provided, subparagraphs (A) to (C), inclusive, shall not apply to increases in transfer amounts described in paragraph (2) of subdivision (h) or to additional transfer amounts described in subdivision (o).

(E) All requests for transfer payments, or adjustments thereto, issued by the department shall be in writing and shall include (i) an explanation of the basis for the particular transfer request or transfer activity, (ii) a summary description of program funding status for the particular transfer year, and (iii) the general calculations used by the department in connection with the particular transfer request or transfer activity.

(3) A transferor entity may use any of the following funds for purposes of meeting its transfer obligations under this section:

(A) General funds of the transferor entity.

(B) Any other funds permitted by law to be used for these purposes, except that a transferor entity shall not submit to the Controller any federal funds unless those federal funds are authorized by federal law to be used to match other federal funds. In addition, no private donated funds from any health care provider, or from any person or organization affiliated with the health care provider, shall be channeled through a transferor entity or any other public entity to the fund, unless the donated funds will qualify under federal rules as a valid component of the nonfederal share of the Medi-Cal program and will be matched by federal funds. The transferor entity shall be responsible for determining that funds transferred meet the requirements of this subparagraph.

(j) (1) If a transferor entity does not submit any transfer amount within the time period specified in this section, the Controller shall offset immediately the amount owed against any funds which otherwise would be payable by the state to the transferor entity. The Controller, however, shall not impose an offset against any particular funds payable to the transferor entity where the offset would violate state or federal law.

(2) Where a withhold or a recoupment occurs pursuant to the provisions of paragraph (2) of subdivision (r) of Section 14105.98, the nonfederal portion of the amount in question shall remain in the fund, or shall be redeposited in the fund by the department, as applicable. The department shall then proceed as follows:

(A) If the withhold or recoupment was imposed with respect to a hospital whose licensee was a transferor entity for the particular state fiscal year to which the withhold or recoupment related, the nonfederal portion of the amount withheld or recouped shall serve as a credit for the particular transferor entity against an equal amount of transfer obligations under this section, to be applied whenever the transfer obligations next arise. Should no such transfer obligation arise within 180 days, the department shall return the funds in question to the particular transferor entity within 30 days thereafter.

(B) For other situations, the withheld or recouped nonfederal portion shall be subject to paragraph (7) of subdivision (h).

(k) All transfer amounts received by the Controller or amounts offset by the Controller shall immediately be deposited in the fund.

(*l*) For purposes of this section, the disproportionate share list utilized by the department for a particular transfer year shall be identical to the disproportionate share list utilized by the department for the same state fiscal year for purposes of Section 14105.98. Nothing on a disproportionate share list, once issued by the department, shall be modified for any reason other than mathematical or typographical errors or omissions on the part of the department or the Office of Statewide Health Planning and Development in preparation of the list.

(m) Neither the intergovernmental transfers required by this section, nor any elective transfer made pursuant to Section 14164, shall create, lead to, or expand the health care funding or service obligations for current or future years for any transferor entity, except as required of the state by this section or as may be required by federal law, in which case the state shall be held harmless by the transferor entities on a pro rata basis.

(n) Except as otherwise permitted by state and federal law, no transfer amount submitted to the Controller under this section, and no offset by the Controller pursuant to subdivision (j), shall be claimed or recognized as an allowable element of cost in Medi-Cal cost reports submitted to the department.

(o) Whenever additional transfer amounts are required to fund the nonfederal share of payment adjustment amounts under Section 14105.98 that are distributed after the close of the particular payment adjustment year to which the payment adjustment amounts apply, the additional transfer amounts shall be paid by the parties who were the transferor entities for the particular transfer year that was concurrent with the particular payment adjustment year. The additional transfer amounts shall be calculated under the formula that was in effect during the particular transfer year. For transfer years prior to the 1993–94 transfer year, the percentage of the additional transfer amounts available for transfer to the Health Care Deposit Fund under subdivision (d) shall

be the percentage that was in effect during the particular transfer year. These additional transfer amounts shall be paid by transferor entities within 20 days after the department notifies the transferor entity in writing of the additional transfer amount to be paid.

(p) (1) Ten million dollars ($10,000,000) of the amount transferred from the Medi-Cal Inpatient Payment Adjustment Fund to the Health Care Deposit Fund due to amounts transferred attributable to years prior to the 1993–94 fiscal year is hereby appropriated without regard to fiscal years to the State Department of Health Services to be used to support the development of managed care programs under the department's plan to expand Medi-Cal managed care.

(2) These funds shall be used by the department for both of the following purposes: (A) distributions to counties or other local entities that contract with the department to receive those funds to offset a portion of the costs of forming the local initiative entity, and (B) distributions to local initiative entities that contract with the department to receive those funds to offset a portion of the costs of developing the local initiative health delivery system in accordance with the department's plan to expand Medi-Cal managed care.

(3) Entities contracting with the department for any portion of the ten million dollars ($10,000,000) shall meet the objectives of the department's plan to expand Medi-Cal managed care with regard to traditional and safety net providers.

(4) Entities contracting with the department for any portion of the ten million dollars ($10,000,000) may be authorized under those contracts to utilize their funds to provide for reimbursement of the costs of local organizations and entities incurred in participating in the development and operation of a local initiative.

(5) To the full extent permitted by state and federal law, these funds shall be distributed by the department for expenditure at the local level in a manner that qualifies for federal financial participation under the medicaid program.

(q) (1) Any local initiative entity that has performed unanticipated additional work for the purposes identified in subparagraph (B) of paragraph (2) of subdivision (p) resulting in additional costs attributable to the development of its local initiative health delivery system, may file a claim for reimbursement with the department for the additional costs incurred due to delays in start dates through the 1996–97 fiscal year. The claim shall be filed by the local initiative entity not later than 90 days after the effective date of the act adding this subdivision, and shall not seek extra compensation for any sum that is or could have been asserted pursuant to the contract disputes and appeals resolution provisions of the local initiative entity's respective two-plan model contract. All claims for unanticipated additional incurred costs shall be submitted with

adequate supporting documentation including, but not limited to, all of the following:

(A) Invoices, receipts, job descriptions, payroll records, work plans, and other materials that identify the unanticipated additional claimed and incurred costs.

(B) Documents reflecting mitigation of costs.

(C) To the extent lost profits are included in the claim, documentation identifying those profits and the manner of calculation.

(D) Documents reflecting the anticipated start date, the actual start date, and reasons for the delay between the dates, if any.

(2) In determining any amount to be paid, the department shall do all of the following:

(A) Conduct a fiscal analysis of the local initiative entity's claimed costs.

(B) Determine the appropriate amount of payment, after taking into consideration the supporting documentation and the results of any audit.

(C) Provide funding for any such payment, as approved by the Department of Finance through the deficiency process.

(D) Complete the determination required in subparagraph (B) within six months after receipt of a local initiative entity's completed claim and supporting documentation. Prior to final determination, there shall be a review and comment period for that local initiative entity.

(E) Make reasonable efforts to obtain federal financial participation. In the event federal financial participation is not allowed for this payment, the state's payment shall be 50 percent of the total amount determined to be payable.

SEC. 89. Section 14495.10 of the Welfare and Institutions Code is amended to read:

14495.10. (a) The department shall establish a pilot program to provide continuous skilled nursing care as a benefit of the Medi-Cal program, when those services are provided in accordance with an approved federal waiver meeting the requirements of subdivision (b). ''Continuous skilled nursing care'' means medically necessary care provided by, or under the supervision of, a registered nurse within his or her scope of practice, seven days a week, 24 hours per day, in a health facility participating in the pilot program. This care shall include a minimum of eight hours per day provided by or under the direct supervision of a registered nurse. Each health facility providing continuous skilled nursing care in the pilot program shall have a minimum of one registered nurse or one licensed vocational nurse awake and in the facility at all times.

(b) The department shall submit to the federal Health Care Financing Administration, no later than April 1, 2000, a federal waiver request developed in consultation with the State Department of Developmental

Services and the Association of Regional Center Agencies, pursuant to Section 1915(b) of the federal Social Security Act to provide continuous skilled nursing care services under the pilot program.

(c) (1) The pilot program shall be conducted to explore more flexible models of health facility licensure to provide continuous skilled nursing care to developmentally disabled individuals in the least restrictive health facility setting, and to evaluate the effect of the pilot program on the health, safety, and quality of life of individuals, and the cost-effectiveness of this care. The evaluation shall include a review of the pilot program by an independent agency.

(2) Participation in the pilot program shall include 10 health facilities provided that the facilities meet all eligibility requirements. The facilities shall be approved by the department, in consultation with the State Department of Developmental Services and the appropriate regional center agencies, and shall meet the requirements of subdivision (e). Priority shall be given to facilities with four to six beds, to the extent those facilities meet all other eligibility requirements.

(d) Under the pilot program established in this section, a developmentally disabled individual is eligible to receive continuous skilled nursing care if all of the following conditions are met:

(1) The developmentally disabled individual meets the criteria as specified in the federal waiver.

(2) The developmentally disabled individual resides in a health facility that meets the provider participation criteria as specified in the federal waiver.

(3) The continuous skilled nursing care services are provided in accordance with the federal waiver.

(4) The continuous skilled nursing care services provided to the developmentally disabled individual do not result in costs that exceed the fiscal limit established in the federal waiver.

(e) A health facility seeking to participate in the pilot program shall provide care for developmentally disabled individuals who require the availability of continuous skilled nursing care, in accordance with the terms of the pilot program. During participation in the pilot program, the health facility shall comply with all the terms and conditions of the federal waiver described in subdivision (b), and shall not be subject to licensure or inspection under Chapter 2 (commencing with Section 1250) of Division 2 of the Health and Safety Code. Upon termination of the pilot program and verification of compliance with Section 1265 of the Health and Safety Code, the department shall immediately reinstate the participating health facility's previous license for the balance of time remaining on the license when the health facility began participation in the pilot program.

(f) The department shall implement this pilot program only to the extent it can demonstrate fiscal neutrality, as required under the terms of the federal waiver, and only if the department has obtained the necessary approvals to implement the pilot program and receives federal financial participation from the federal Health Care Financing Administration.

(g) In implementing this article, the department may enter into contracts for the provision of essential administration and other services. Contracts entered into under this section may be on a noncompetitive bid basis and shall be exempt from the requirements of Chapter 2 (commencing with Section 10290) of Part 2 of Division 2 of the Public Contract Code.

(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 becomes effective on or before January 1, 2006, deletes or extends that date.

SEC. 90. Section 16809 of the Welfare and Institutions Code, as amended by Section 45 of Chapter 171 of the Statutes of 2001, is amended to read:

16809. (a) (1) The board of supervisors of a county that contracted with the department pursuant to Section 16709 during the 1990–91 fiscal year and any county with a population under 300,000, as determined in accordance with the 1990 decennial census, by adopting a resolution to that effect, may elect to participate in the County Medical Services Program. The County Medical Services Program shall have responsibilities for specified health services to county residents certified eligible for those services by the county.

(2) If the County Medical Services Program Governing Board contracts with the department to administer the County Medical Services Program, that contract shall include, but need not be limited to, all of the following:

(A) Provisions for the payment to participating counties for making eligibility determinations based on the formula used by the County Medical Services Program for the 1993–94 fiscal year.

(B) Provisions for payment of expenses of the County Medical Services Program Governing Board.

(C) Provisions relating to the flow of funds from counties' vehicle license fees, sales taxes, and participation fees and the procedures to be followed if a county does not pay those funds to the program.

(D) Those provisions, as applicable, contained in the 1993–94 fiscal year contract with counties under the County Medical Services Program.

(3) The contract between the department and the County Medical Services Program Governing Board shall require that the County Medical Services Program Governing Board shall reimburse three million five hundred thousand dollars ($3,500,000) for the state costs of providing administrative support to the County Medical Services

Program. The department may decline to implement decisions made by the governing board that would require a greater level of administrative support than that for the 1993–94 fiscal year. The department may implement decisions upon compensation by the governing board to cover that increased level of support.

(4) The contract between the department and the County Medical Services Program Governing Board may include provisions for the administration of a pharmacy benefit program and, pursuant to these provisions, the department may negotiate, on behalf of the County Medical Services Program, rebates from manufacturers that agree to participate. The governing board shall reimburse the department for staff costs associated with this paragraph.

(5) The department shall administer the County Medical Services Program pursuant to the provisions of the 1993–94 fiscal year contract with the counties and regulations relating to the administration of the program until the County Medical Services Program Governing Board executes a contract for the administration of the County Medical Services Program and adopts regulations for that purpose.

(6) The department shall not be liable for any costs related to decisions of the County Medical Services Program Governing Board that are in excess of those set forth in the contract between the department and the County Medical Services Program Governing Board.

(b) Each county intending to participate in the County Medical Services Program pursuant to this section shall submit to the Governing Board of the County Medical Services Program a notice of intent to contract adopted by the board of supervisors no later than April 1 of the fiscal year preceding the fiscal year in which the county will participate in the County Medical Services Program.

(c) A county participating in the County Medical Services Program pursuant to this section shall not be relieved of its indigent health care obligation under Section 17000.

(d) (1) The County Medical Services Program Account is established in the County Health Services Fund. The County Medical Services Program Account is continuously appropriated, notwithstanding Section 13340 of the Government Code, without regard to fiscal years. The following amounts may be deposited in the account:

(A) Any interest earned upon money deposited in the account.

(B) Moneys provided by participating counties or appropriated by the Legislature to the account.

(C) Moneys loaned pursuant to subdivision (q).

(2) The methods and procedures used to deposit funds into the account shall be consistent with the methods used by the program during the 1993–94 fiscal year.

(e) Moneys in the program account shall be used by the department, pursuant to its contract with the County Medical Services Program Governing Board, to pay for health care services provided to the persons meeting the eligibility criteria established pursuant to subdivision (j) and to pay for the expense of the governing board as set forth in the contract between the board and the department. In addition, moneys in this account may be used to reimburse the department for state costs pursuant to paragraph (3) of subdivision (a).

(f) (1) Moneys in this account shall be administered on an accrual basis and notwithstanding any other provision of law, except as provided in this section, shall not be transferred to any other fund or account in the State Treasury except for purposes of investment as provided in Article 4 (commencing with Section 16470) of Chapter 3 of Part 2 of Division 4 of Title 2 of the Government Code.

(2) (A) All interest or other increment resulting from the investment shall be deposited in the program account, at the end of the 1982–83 fiscal year and every six months thereafter, notwithstanding Section 16305.7 of the Government Code.

(B) All interest deposited pursuant to subparagraph (A) shall be available to reimburse program-covered services, County Medical Services Program Governing Board expenses, or for expenditures to augment the program's rates, benefits, or eligibility criteria pursuant to subdivision (j).

(g) A separate County Medical Services Program Reserve Account is established in the County Health Services Fund. Six months after the end of each fiscal year, any projected savings in the program account shall be transferred to the reserve account, with final settlement occurring no more than 12 months later. Moneys in this account shall be utilized when expenditures for health services made pursuant to subdivision (j) for a fiscal year exceed the amount of funds available in the program account for that fiscal year. When funds in the reserve account are estimated to exceed 10 percent of the budget for health services for all counties electing to participate in the County Medical Services Program under this section for the fiscal year, the additional funds shall be available for expenditure to augment the rates, benefits, or eligibility criteria pursuant to subdivision (j) or for reducing the participation fees as determined by the County Medical Services Program Governing Board pursuant to subdivision (i). Nothing in this section shall preclude the CMSP Governing Board from establishing other reserves.

(h) Moneys in the program account and the reserve account, except for moneys provided by the state in excess of the amount required to fund the state risk specified in subdivision (j), and any funds loaned pursuant to subdivision (q) shall not be transferred to any other fund or account

in the State Treasury except for purposes of investment as provided in Article 4 (commencing with Section 16470) of Chapter 3 of Part 2 of Division 4 of Title 2 of the Government Code. All interest or other increment resulting from investment shall be deposited in the program account, notwithstanding Section 16705.7 of the Government Code.

(i) (1) Counties shall pay participation fees as established by the County Medical Services Program Governing Board and their jurisdictional risk amount in a method that is consistent with that established in the 1993–94 fiscal year.

(2) A county may request, due to financial hardship, the payments under paragraph (1) be delayed. The request shall be subject to approval by the CMSP Governing Board.

(3) Payments made pursuant to this subdivision shall be deposited in the program account.

(4) Payments may be made as part of the deposits authorized by the county pursuant to Sections 17603.05 and 17604.05.

(j) (1) (A) For the 1991–92 fiscal year and all preceding fiscal years, the state shall be at risk for any costs in excess of the amounts deposited in the reserve fund.

(B) (i) Beginning in the 1992–93 fiscal year and for each fiscal year thereafter, counties and the state shall share the risk for cost increases of the County Medical Services Program not funded through other sources. The state shall be at risk for any cost that exceeds the cumulative annual growth in dedicated sales tax and vehicle license fee revenue, up to the amount of twenty million two hundred thirty-seven thousand four hundred sixty dollars ($20,237,460) per fiscal year, except for the 1999–2000, 2000–01, 2001–02, and 2002–03 fiscal years. Counties shall be at risk up to the cumulative annual growth in the Local Revenue Fund created by Section 17600, according to the table specified in paragraph (2), to the County Medical Services Program, plus the additional cost increases in excess of twenty million two hundred thirty-seven thousand four hundred sixty dollars ($20,237,460) per fiscal year, except for the 1999–2000, 2000–01, 2001–02, and 2002–03 fiscal years. In the 1994–95 fiscal year, the amount of the state risk shall be twenty million two hundred thirty-seven thousand four hundred sixty dollars ($20,237,460) per fiscal year, in addition to the cost of administrative support pursuant to paragraph (3) of subdivision (a).

(ii) For the 1999–2000, 2000–01, 2001–02, and 2002–03 fiscal years, the state shall not be at risk for any cost that exceeds the cumulative annual growth in dedicated sales tax and vehicle license fee revenue. Counties shall be at risk up to the cumulative annual growth in the Local Revenue Fund created by Section 17600, according to the table specified in paragraph (2), to the County Medical Services Program, plus any

additional cost increases for the 1999–2000, 2000–01, 2001–02, and 2002–03 fiscal years.

(C) The CMSP Governing Board, after consultation with the department, shall establish uniform eligibility criteria and benefits for the County Medical Services Program.

(2) For the 1991–92 fiscal year, jurisdictional risk limitations shall be as follows:

Jurisdiction	Amount
Alpine	$ 13,150
Amador	620,264
Butte	5,950,593
Calaveras	913,959
Colusa	799,988
Del Norte	781,358
El Dorado	3,535,288
Glenn	787,933
Humboldt	6,883,182
Imperial	6,394,422
Inyo	1,100,257
Kings	2,832,833
Lassen	687,113
Madera	2,882,147
Marin	7,725,909
Mariposa	435,062
Modoc	469,034
Mono	369,309
Napa	3,062,967
Nevada	1,860,793
Plumas	905,192
San Benito	1,086,011
Shasta	5,361,013
Sierra	135,888
Siskiyou	1,372,034
Solano	6,871,127
Sonoma	13,183,359
Sutter	2,996,118
Tehama	1,912,299
Trinity	611,497
Tuolumne	1,455,320
Yuba	2,395,580

(3) Beginning in the 1991–92 fiscal year and in subsequent fiscal years, the jurisdictional risk limitation for the counties that did not contract with the department pursuant to Section 16709 during the 1990–91 fiscal year shall be the amount specified in paragraph (A) plus the amount determined pursuant to paragraph (B), minus the amount specified by the County Medical Services Program Governing Board as participation fees.

(A)

Jurisdiction	Amount
Lake	$1,022,963
Mendocino	1,654,999
Merced	2,033,729
Placer	1,338,330
San Luis Obispo	2,000,491
Santa Cruz	3,037,783
Yolo	1,475,620

(B) The amount of funds necessary to fully fund the anticipated costs for the county shall be determined by the CMSP Governing Board before a county is permitted to participate in the County Medical Services Program.

(4) For the 1994–95 and 1995–96 fiscal years, the specific amounts and method of apportioning risk to each participating county may be adjusted by the CMSP Governing Board.

(k) The Legislature hereby determines that an expedited contract process for contracts under this section is necessary. Contracts under this section shall be exempt from Part 2 (commencing with Section 10100) of Division 2 of the Public Contract Code. Contracts of the department pursuant to this section shall have no force or effect unless they are approved by the Department of Finance.

(*l*) The state shall not incur any liability except as specified in this section.

(m) Third-party recoveries for services provided under this section pursuant to Article 3.5 (commencing with Section 14124.70) of Chapter 7 of Part 3 may be pursued.

(n) Under the program provided for in this section, the department may reimburse hospitals for inpatient services at the rates negotiated for the Medi-Cal program by the California Medical Assistance Commission, pursuant to Article 2.6 (commencing with Section 14081) of Chapter 7 of Part 3, if the California Medical Assistance Commission determines that reimbursement to the hospital at the contracted rate will not have a detrimental fiscal impact on either the Medi-Cal program or

the program provided for in this section. In negotiating and renegotiating contracts with hospitals, the commission may seek terms which allow reimbursement for patients receiving services under this section at contracted Medi-Cal rates.

(o) Any hospital which has a contract with the state for inpatient services under the Medi-Cal program and which has been approved by the commission to be reimbursed for patients receiving services under this section shall not deny services to these patients.

(p) Participating counties may conduct an independent program review to identify ways through which program savings may be generated. The counties and the department may collectively pursue identified options for the realization of program savings.

(q) The Department of Finance may authorize a loan of up to thirty million dollars ($30,000,000) for deposit into the program account to ensure that there are sufficient funds available to reimburse providers and counties pursuant to this section.

(r) Regulations adopted by the department pursuant to this section shall remain operative and shall be used to operate the County Medical Services Program until a contract with the County Medical Services Program Governing Board is executed and regulations, as appropriate, are adopted by the County Medical Services Program Governing Board. Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, those regulations adopted under the County Medical Services Program shall become inoperative until January 1, 1998, except those regulations that the department, in consultation with the County Medical Services Program Governing Board, determines are needed to continue to administer the County Medical Services Program. The department shall notify the Office of Administrative Law as to those regulations the department will continue to use in the implementation of the County Medical Services Program.

(s) Moneys appropriated from the General Fund to meet the state risk as set forth in subparagraph (B) of paragraph (1) of subdivision (j) shall not be available for those counties electing to disenroll from the County Medical Services Program.

(t) This section shall remain in effect only until January 1, 2008, and as of that date is repealed, unless a later enacted statute, that is enacted on or before January 1, 2008, deletes or extends that date.

SEC. 91. Section 16809 of the Welfare and Institutions Code, as amended by Section 2 of Chapter 669 of the Statutes of 1997, is amended to read:

16809. (a) The board of supervisors of a county that contracted with the department pursuant to Section 16709 during the 1990–91 fiscal year and any county with a population under 300,000, as determined in

accordance with the 1990 decennial census, may enter into a contract with the department and the department may enter into a contract with that county under which the department agrees to administer the program responsibilities for specified health services to county residents certified eligible for those services by the county.

(b) Each county intending to contract with the department pursuant to this section shall submit to the department a notice of intent to contract adopted by the board of supervisors no later than April 1 of the fiscal year preceding the fiscal year for which the agreement will be in effect in accordance with procedures established by the department.

(c) A county contracting with the department pursuant to this section shall not be relieved of its indigent health care obligation under Section 17000.

(d) The department shall establish the County Medical Services Program Account in the County Health Services Fund. The County Medical Services Program Account is continuously appropriated, notwithstanding Section 13340 of the Government Code, without regard to fiscal years. The following amounts may be deposited in the account:

(1) Any interest earned upon money deposited in the account.

(2) Moneys provided by participating counties or appropriated by the Legislature to the account.

(3) Moneys loaned pursuant to subdivision (q).

(e) Moneys in the program account shall be used by the department to pay for health care services provided to the persons meeting the eligibility criteria established pursuant to subdivision (j).

(f) (1) Moneys in this account shall be administered on an accrual basis and notwithstanding any other provision of law, except as provided in this section, shall not be transferred to any other fund or account in the State Treasury except for purposes of investment as provided in Article 4 (commencing with Section 16470) of Chapter 3 of Part 2 of Division 4 of Title 2 of the Government Code.

(2) (A) All interest or other increment resulting from the investment shall be deposited in the program account, at the end of the 1982–83 fiscal year and every six months thereafter, notwithstanding Section 16305.7 of the Government Code.

(B) All interest deposited pursuant to subparagraph (A) shall be available to reimburse program-covered services, or for expenditures to augment the program's rates, benefits, or eligibility criteria pursuant to subdivision (j).

(g) The department shall establish a separate County Medical Services Program Reserve Account in the County Health Services Fund. Six months after the end of each fiscal year, any projected savings in the program account shall be transferred to the reserve account, with final settlement occurring no more than 12 months later. Moneys in this

account shall be utilized when expenditures for health services made pursuant to subdivision (j) for a fiscal year exceed the amount of funds available in the program account for that fiscal year. When funds in the reserve account are estimated to exceed 10 percent of the budget for health services for all counties electing to contract with the department under this section for the fiscal year, the additional funds shall be available for expenditure to augment the rates, benefits, or eligibility criteria pursuant to subdivision (j) or for reducing the participation fees required by Section 16809.3.

(h) Moneys in the program account and the reserve account, except for moneys provided by the state in excess of the amount required to fund the state risk specified in subdivision (j), and any funds loaned pursuant to subdivision (q), shall not be transferred to any other fund or account in the State Treasury except for purposes of investment as provided in Article 4 (commencing with Section 16470) of Chapter 3 of Part 2 of Division 4 of Title 2 of the Government Code. All interest or other increment resulting from investment shall be deposited in the program account, notwithstanding Section 16705.7 of the Government Code.

(i) (1) Counties shall pay by the 15th of each month the agreed-upon contract amount. In the event a county does not make the agreed-upon monthly payment, the department may terminate the county's participation in the program.

(2) A county may request, due to financial hardship, the payments under paragraph (1) be delayed. The request shall be subject to approval by the Small County Advisory Committee.

(3) Payments made pursuant to this subdivision shall be deposited in the program account.

(4) Payments may be made as part of the deposits authorized by the county pursuant to Sections 17603.05 and 17604.05.

(j) (1) (A) For the 1991–92 fiscal year and all preceding fiscal years, the state shall be at risk for any costs in excess of the amounts deposited in the reserve fund.

(B) Beginning in the 1992–93 fiscal year and for each fiscal year thereafter, counties and the state shall share the risk for cost increases of the County Medical Services Program not funded through other sources. The state shall be at risk for any cost that exceeds the cumulative annual growth in dedicated sales tax and vehicle license fee revenue, up to the amount of twenty million two hundred thirty-seven thousand four hundred sixty dollars ($20,237,460) per fiscal year, except for the 2002–03 fiscal year. Counties shall be at risk up to the cumulative annual growth in the Local Revenue Fund created by Section 17600 according to the table specified in paragraph (2) to the County Medical Services Program, plus additional cost increases in excess of twenty million two

hundred thirty-seven thousand four hundred sixty dollars ($20,237,460) per fiscal year.

(C) As a condition of the state assuming this risk, the department may require uniform eligibility criteria and benefits to be provided which shall be mutually established by participating counties in conjunction with the department. The County Medical Services Program Governing Board may revise these eligibility criteria and benefits or alter rates of payment in order to assure that expenditures do not exceed the funds available in the program account.

(2) For the 1991–92 fiscal year, jurisdictional risk limitations shall be as follows:

Jurisdiction	Amount
Alpine	$ 13,150
Amador	620,264
Butte	5,950,593
Calaveras	913,959
Colusa	799,988
Del Norte	781,358
El Dorado	3,535,288
Glenn	787,933
Humboldt	6,883,182
Imperial	6,394,422
Inyo	1,100,257
Kings	2,832,833
Lassen	687,113
Madera	2,882,147
Marin	7,725,909
Mariposa	435,062
Modoc	469,034
Mono	369,309
Napa	3,062,967
Nevada	1,860,793
Plumas	905,192
San Benito	1,086,011
Shasta	5,361,013
Sierra	135,888
Siskiyou	1,372,034
Solano	6,871,127
Sonoma	13,183,359
Sutter	2,996,118
Tehama	1,912,299

Trinity	611,497
Tuolumne	1,455,320
Yuba	2,395,580

(3) Beginning in the 1991–92 fiscal year and in subsequent fiscal years, the jurisdictional risk limitation for the counties that did not contract with the department pursuant to Section 16709 during the 1990–91 fiscal year shall be the amount specified in paragraph (A) plus the amount determined pursuant to paragraph (B), minus the amount specified in Section 16809.3.

(A)

Jurisdiction	Amount
Lake	1,022,963
Mendocino	1,654,999
Merced	2,033,729
Placer	1,338,330
San Luis Obispo	2,000,491
Santa Cruz	3,037,783
Yolo	1,475,620

(B) The amount of funds necessary to fully fund the anticipated costs for the county shall be determined by the department. This amount shall be subject to the approval of both the Department of Finance and the Small County Advisory Committee before a county is permitted to contract back with the department.

(4) For the 1992–93 fiscal year and fiscal years thereafter, the amounts of the jurisdictional risk limitations shall be adjusted according to the provisions of paragraph (2).

(k) The Legislature hereby determines that an expedited contract process for contracts under this section is necessary. Contracts under this section shall be exempt from the provisions of Chapter 2 (commencing with Section 10290) of Part 2 of Division 2 of the Public Contract Code. Contracts shall have no force and effect unless approved by the Department of Finance.

(*l*) The state shall not incur any liability except as specified in this section.

(m) The department may pursue third-party recoveries for services provided under this section pursuant to Article 3.5 (commencing with Section 14124.70) of Chapter 7 of Part 3.

(n) Under the program provided for in this section, the department shall reimburse hospitals for inpatient services at the rates negotiated for the Medi-Cal program by the California Medical Assistance

Commission, pursuant to Article 2.6 (commencing with Section 14081) of Chapter 7 of Part 3, if the California Medical Assistance Commission determines that reimbursement to the hospital at the contracted rate will not have a detrimental fiscal impact on either the Medi-Cal program or the program provided for in this section. In negotiating and renegotiating contracts with hospitals, the commission may seek terms which allow reimbursement for patients receiving services under this section at contracted Medi-Cal rates.

(o) Any hospital which has a contract with the state for inpatient services under the Medi-Cal program and which has been approved by the commission to be reimbursed for patients receiving services under this section shall not deny services to these patients.

(p) Participating counties may conduct an independent program review to identify ways through which program savings may be generated. The counties and the department shall collectively pursue identified options for the realization of program savings.

(q) The Department of Finance may authorize a loan of up to thirty million dollars ($30,000,000) for deposit into the program account to ensure that there are sufficient funds available to reimburse providers and counties pursuant to this section.

(r) This section shall become operative January 1, 2008.

SEC. 91.5. Section 16809.4 of the Welfare and Institutions Code is amended to read:

16809.4. (a) Counties voluntarily participating in the County Medical Services Program pursuant to Section 16809 may establish the County Medical Services Program Governing Board pursuant to procedures contained in this section. The board shall govern the CMSP program.

(b) The membership of the board shall be comprised of all of the following:

(1) Three members who shall each be a member of a county board of supervisors.

(2) Three members who shall be county administrative officers.

(3) Two members who shall be county welfare directors.

(4) Two members who shall be county health officials.

(5) One member who shall be the Secretary of the Health and Welfare Agency, or his or her designee, and who shall serve as an ex officio, nonvoting member.

(c) The board may establish its own bylaws and operating procedures.

(d) The voting membership of the board shall meet all of the following requirements:

(1) All of the members shall hold office or employment in counties that participate in the CMSP program.

(2) The initial CMSP Governing Board shall be composed of the incumbent members of the Small County Advisory Committee holding office on the effective date of this section. Those members shall choose one additional county supervisor and one additional county administrative officer. The initial CMSP Governing Board shall hold office until April 1, 1995.

(3) The initial CMSP Governing Board shall be succeeded on April 1, 1995, by a board chosen in the following order so as to ensure that no two representatives shall be from the same county.

Following the effective date of this section:

(A) The three county supervisor members shall be elected by the CMSP counties acting prior to February 1, 1995, with each county having one vote and convened at the call of the Chair of the CMSP Governing Board.

(B) The three county administrative officers shall be elected by the administrative officers of the CMSP counties convened at the call of the Chair of the CMSP Governing Board prior to February 15, 1995.

(C) The two county health officials shall be selected by the health officials of the CMSP counties convened at the call of the Chair of the CMSP Governing Board prior to March 1, 1995.

(D) The two county welfare directors shall be elected by the welfare directors of the CMSP counties convened at the call of the Chair of the CMSP Governing Board prior to March 15, 1995.

(4) Board members shall serve three-year terms.

(5) No two persons from the same county may serve as members of the board at the same time.

(e) (1) The board shall convene its first meeting at the call of the Chair of the Small County Advisory Committee, who shall serve as interim chairperson of the board.

(2) The board may elect a permanent chair.

(f) (1) The CMSP Governing Board is hereby established with the following powers:

(A) Determine program eligibility and benefit levels.

(B) Establish reserves and participation fees.

(C) Establish procedures for the entry into, and disenrollment of counties from the County Medical Services Program. Disenrollment procedures shall be fair and equitable.

(D) Establish cost containment and case management procedures, including, but not limited to, alternative methods for delivery of care and alternative methods and rates for those authorized by the department.

(E) Sue and be sued in the name of the CMSP Governing Board.

(F) Apportion jurisdictional risk to each county.

(G) Utilize procurement policies and procedures of any of the participating counties as selected by the governing board.

(H) Make rules and regulations.

(I) Make and enter into contracts or stipulations of any nature with a public agency or person for the purposes of governing or administering the CMSP.

(J) Purchase supplies, equipment, materials, property, or services.

(K) Appoint and employ staff to assist the CMSP Governing Board.

(L) Establish rules for its proceedings.

(M) Accept gifts, contributions, grants, or loans from any public agency or person for the purposes of this program.

(N) Negotiate and set rates, charges, or fees with service providers, including alternative methods of payment to those used by the department.

(O) Establish methods of payment that are compatible with the administrative requirements of the department's fiscal intermediary during the term of any contract with the department for the administration of the CMSP.

(P) Use generally accepted accounting procedures.

(2) The Legislature finds and declares that the amendment of subparagraph (N) of paragraph (1) in 1995 is declaratory of existing law.

(g) (1) The CMSP Governing Board shall be considered a ''public entity'' for purposes of Division 3.6 (commencing with Section 810) of Title 1 of the Government Code, and a ''local public entity'' for purposes of Part 3 (commencing with Section 900) of Division 3.6 of Title 1 of the Government Code, but shall not be considered a ''state agency'' for purposes of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code and shall be exempt from that chapter. No participating county shall have any liability for civil judgments awarded against the County Medical Services Program or the board. Nothing in this paragraph shall be construed to expand the liability of the state with respect to the County Medical Services Program beyond that set forth in Section 16809. Nothing in this paragraph shall be construed to relieve any county of the obligation to provide health care to indigent persons pursuant to Section 17000.

(2) Before initiating any proceeding to challenge rates of payment, charges, or fees set by the board, to seek reimbursement or release of any funds from the County Medical Services Program, or to challenge any other action by the board, any prospective claimant shall first notify the board, in writing, of the nature and basis of the challenge and the amount claimed. The board shall consider the matter within 60 days after receiving the notice and shall promptly thereafter provide written notice of the board's decision. This paragraph shall have no application to provider audit appeals conducted pursuant to Article 1.5 (commencing with Section 51016) of Chapter 3 of Division 3 of Title 22 of the California Code of Regulations and shall apply to all claims not

reviewed pursuant to Sections 51003 or 51015 of Title 22 of the California Code of Regulations.

(3) All regulations adopted by the CMSP Governing Board shall clearly specify by reference the statute, court decision, or other provision of law that the governing board is seeking to implement, interpret, or make specific by adopting, amending, or repealing the regulation.

(4) No regulation adopted by the governing board is valid and effective unless the regulation meets the standards of necessity, authority, clarity, consistency, and nonduplication, as defined in paragraph (4).

(5) The following definitions govern the interpretation of this subdivision:

(A) ''Necessity'' means the record of the regulatory proceeding that demonstrates by substantial evidence the need for the regulation. For purposes of this standard, evidence includes, but is not limited to, facts, studies, and expert opinion.

(B) ''Authority'' means the provision of law that permits or obligates the CMSP Governing Board to adopt, amend, or repeal a regulation.

(C) ''Clarity'' means that the regulation is written or displayed so that the meaning of the regulation can be easily understood by those persons directly affected by it.

(D) ''Consistency'' means being in harmony with, and not in conflict with, or contradictory to, existing statutes, court decisions, or other provisions of law.

(E) ''Nonduplication'' means that a regulation does not serve the same purpose as a state or federal statute or another regulation. This standard requires that the governing board identify any state or federal statute or regulation that is overlapped or duplicated by the proposed regulation and justify any overlap or duplication. This standard is not intended to prohibit the governing board from printing relevant portions of enabling legislation in regulations when the duplication is necessary to satisfy the clarity standard in subparagraph (C). This standard is intended to prevent the indiscriminate incorporation of statutory language in a regulation.

(h) The requirements of the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code) shall apply to the meetings of the CMSP Governing Board, except as otherwise provided in this subdivision. The board may meet in closed session to consider and take action on matters pertaining to contracts and contract negotiations with providers of health care services. The governing board shall comply with the following procedures for public meetings held to eliminate or reduce the level of services, restrict eligibility for services, or adopt regulations:

(1) Provide prior public notice of those meetings.

(2) Provide that notice not less than 30 days prior to those meetings.

(3) Publish that notice in a newspaper of general circulation in each participating CMSP county.

(4) Include in the notice, at a minimum, the amount and type of each proposed change, the expected savings, and the number of persons affected.

(5) Hold those meetings in the county seats of at least four regionally distributed CMSP participating counties.

(6) Locate those meetings so as to provide that each hearing will be within a four-hour one-way drive of one quarter of the target population so that the four meetings shall be held at locations in the state that will ensure that each member of the target population may reach at least one of the meetings by a one-way drive that does not exceed four hours.

(i) Records of the County Medical Services Program and of the CMSP Governing Board that relate to rates of payment or to the board's negotiations with providers of health care services or to the board's deliberative processes regarding either shall not be subject to disclosure pursuant to the Public Records Act (Chapter 5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code).

(j) The following definitions shall govern the construction of this part, unless the context requires otherwise:

(1) ''CMSP Governing Board'' means the County Medical Services Program Governing Board established pursuant to this section.

(2) ''Board'' means the County Medical Services Program Governing Board established pursuant to this section.

(3) ''CMSP'' means the program by which health care services are provided to eligible persons in those counties electing to participate in the CMSP pursuant to Section 16809.

(4) ''CMSP county'' means a county that has elected to participate pursuant to Section 16809 in the CMSP.

(k) Any references to the ''County Medical Services Program'' or ''CMSP county'' in this code shall be defined as set forth in this section.

(*l*) This section shall remain in effect only until January 1, 2008, and as of that date is repealed, unless a later enacted statute, that is enacted on or before January 1, 2008, deletes or extends that date.

SEC. 92. Section 18925 of the Welfare and Institutions Code is amended 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.

(i) This section shall be implemented on or after July 1, 2003, but only to the extent federal financial participation is available.

SEC. 93. The State Department of Health Services may adopt emergency regulations to implement the applicable provisions of this act

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 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, or general welfare. Initial emergency regulations and the first readoption of those regulations shall be exempt from review by the Office of Administrative Law. The initial emergency regulations and the first readoption of those regulations authorized by this section shall be submitted to the Office of Administrative Law for filing with the Secretary of State and publication in the California Code of Regulations and each shall remain in effect for no more than 180 days.

SEC. 94. The department may not recoup any overpayment made to a provider before October 1, 2002, pursuant to Section 14109 of the Welfare and Institutions Code for ambulance transport services, if the overpayment is not due to the fault of the provider.

SEC. 95. (a) The State Department of Health Services shall complete the design and implementation of the Children's Medical Services Network (CMS Net) Enhancement 47 project to ensure that all system enhancements for CMS Net, the California Medicaid Management Information System (CA-MMIS), and the California Dental Management Information System (CD-MMIS) that are required to enable providers in the California Children's Services (CCS) provider network to submit electronic claims for reimbursement for services provided to CCS eligible children are operational by August 1, 2004.

(b) The department shall work in cooperation with county CCS programs that are not yet participating in CMS Net to take all necessary action within available resources to expedite the transition of these county programs to CMS Net for the provision of automated case management and service authorization for all CCS eligible children in their county caseload.

SEC. 96. (a) The California Health and Human Services Agency shall develop a comprehensive plan describing the actions that California may take to improve its long-term care system so that its residents have available an array of community care options that allow them to avoid unnecessary institutionalization. The plan shall respond to the decision of the United States Supreme Court in Olmstead v. L.C. (1999) 527 U.S. 581 and shall embody the six principles for an ''Olmstead Plan'' as articulated by the federal Center for Medicaid and Medicare Services. These principles include:

(1) A comprehensive, effectively working plan.

(2) A plan development and implementation process that provides for the involvement of consumers and other stakeholders.

(3) The development of assessment procedures and practices that prevent or correct current and future unjustified institutionalization of persons with disabilities.

(4) An assessment of the current availability of community-integrated services, identification of gaps in service availability, and evaluation of changes that could be made to enable consumers to be served in the most integrated setting possible.

(5) The inclusion in the plan of practices by which consumers are afforded the opportunity to make informed choices among the services available to them.

(6) Elements in the plan that ensure that services are provided in the most integrated setting appropriate and that the quality of services meets the needs of the consumers.

(b) The plan required under subdivision (a) shall be submitted to the Legislature on or before April 1, 2003.

SEC. 97. It is the intent of the Legislature that a significant portion of funds received in the 2003–04 fiscal year and subsequent fiscal years, due to increased federal financial participation attributable to the medicaid home- and community-based waiver program under Section 1396n of Title 42 of the United States Code or other similar initiatives, shall be used to increase the rates for community-based providers serving individuals with developmental disabilities and other actions related to expanding and improving services and supports. The purpose of these fund adjustments shall be to increase community living options, provide expanded consumer choice, provide for increased health and physical safety, and improve the overall stability of community-based services and supports.

SEC. 98. The State Department of Developmental Services shall ensure that funds appropriated in Item 4300-101-0001 of the Budget Act of 2002 to address concerns regarding the potential underfunding of regional center operations shall be used by each regional center toward achieving and maintaining service coordinator caseloads, as contained in subdivision (c) of Section 4640.6 of the Welfare and Institutions Code. In addition, these funds may be used to provide for increased clinical staff as necessary to meet requirements under the federal home- and community-based waiver program (42 U.S.C. Sec. 1396n).

SEC. 99. The State Department of Developmental Services shall ensure that funds appropriated in Item 4300-101-0001 of the Budget Act of 2002 for the purpose of funding a federal program coordinator position at each regional center will be used only for that purpose. This position shall address issues pertaining to federally funded programs serving individuals with developmental disabilities as appropriate, including the home- and community-based waiver program (42 U.S.C.

Sec. 1396n), as well as seeking increased federal financial participation when practicable.

SEC. 100. (a) Of the amount appropriated in Item 4300-101-0001 of the Budget Act of 2002, up to five million six hundred thousand dollars ($5,600,000) may be used to provide one-time only grant awards to community-based service providers to conduct resource development activities for hard-to-serve populations, including dual diagnosis, and medically and behaviorally challenged individuals who have been identified through the community placement plan process as being appropriate for community placement and whose needs cannot otherwise be met within the existing array of service options in the community.

(b) The grant awards shall be allocated pursuant to subdivision (a) by the State Department of Developmental Services with the intent to improve the quality of local services and to stabilize service systems. Regional centers may serve as the fiscal agent for these one-time grants.

SEC. 101. (a) Of the amount appropriated in Item 4260-111-0001 of the Budget Act of 2002 from the Cigarette and Tobacco Products Surtax Fund, twenty-four million eight hundred three thousand dollars ($24,803,000) shall be allocated in accordance with subdivision (b) for the 2002–03 fiscal year from the following accounts:

(1) Nine million fifteen thousand dollars ($9,015,000) from the Hospital Services Account.

(2) Two million three hundred twenty-eight thousand dollars ($2,328,000) from the Physician Services Account.

(3) Thirteen million four hundred sixty thousand dollars ($13,460,000) from the Unallocated Account.

(b) The funds specified in subdivision (a) shall be allocated proportionately as follows:

(1) Twenty-two million three hundred twenty-four thousand dollars ($22,324,000) shall be administered and allocated for distribution through the California Healthcare for Indigents Program (CHIP), Chapter 5 (commencing with Section 16940) of Part 4.7 of Division 9 of the Welfare and Institutions Code.

(2) Two million four hundred seventy-nine thousand dollars ($2,479,000) shall be administered and allocated through the rural health services program, Chapter 4 (commencing with Section 16930) of Part 4.7 of Division 9 of the Welfare and Institutions Code.

(c) Funds allocated by this section from the Physician Services Account and the Unallocated Account in the Cigarette and Tobacco Products Surtax Fund shall be used only for the reimbursement of uncompensated emergency services, as defined in Section 16953 of the Welfare and Institutions Code. Funds shall be transferred to the Physician Services Account in the county Emergency Medical Services

Fund established pursuant to Sections 16951 and 16952 of the Welfare and Institutions Code.

(d) Funds allocated by this section from the Hospital Services Account in the Cigarette and Tobacco Products Surtax Fund shall be used only for reimbursement of uncompensated emergency services, as defined in Section 16953 of the Welfare and Institutions Code, provided in general acute care hospitals providing basic, comprehensive, or standby emergency services. Reimbursement for emergency services shall be consistent with Section 16952 of the Welfare and Institutions Code.

SEC. 102. Notwithstanding any other provision of law, the unencumbered balances, as of June 30, 2002, of the amounts appropriated in Item 4260-001-0589 of Chapter 50 of the Statutes of 1999, Item 4260-001-0589 of Chapter 52 of the Statutes of 2000, and Item 4260-001-0589 of Chapter 106 of the Statutes of 2001 are hereby reappropriated for the purposes specified in those items, and shall be available for encumbrance and expenditure until July 30, 2005.

SEC. 103. (a) In order to implement changes in the level of funding for Medi-Cal services in the Budget Act of 2002, effective August 1, 2002, the Director of Health Services shall eliminate all provider rate increases that were provided, effective August 1, 2000, for services rendered in the Medi-Cal program, except for the supplemental rate for the California Children's Services Program, home health services, shift nursing, nonemergency medical transportation, and family planning physician services. The director shall take this action pursuant to the rate-setting authority provided under subdivision (a) of Section 14105 of the Welfare and Institutions Code. The director shall also conform the rates for the same services rendered by the same provider types in non-Medi-Cal programs pursuant to Section 14105.18 of the Welfare and Institutions Code to those paid in the Medi-Cal program, absent regulations adopted pursuant to subdivision (c) of Section 14105.18 of the Welfare and Institutions Code. The rates for managed health care plans shall be reduced by the actuarial equivalent amount of the provider rate reductions made by this section at the time of the plan's next rate determination.

(b) For purposes of this section, ''provider'' means any provider participating in the Medi-Cal program that received a rate increase, effective August 1, 2000, but does not include the following:

(1) A general acute care hospital as defined in subdivision (a) of Section 1250 of the Health and Safety Code.

(2) A skilled nursing facility as defined in subdivision (c) of Section 1250 of the Health and Safety Code.

(3) An intermediate care facility/developmentally disabled as defined in subdivision (g) of Section 1250 of the Health and Safety Code.

(4) An intermediate care facility/developmentally disabled habilitative as defined in subdivision (e) of Section 1250 of the Health and Safety Code.

(5) An intermediate care facility/developmentally disabled-nursing as defined in subdivision (h) of Section 1250 of the Health and Safety Code.

(6) An adult day health care center as defined in subdivision (b) of Section 1570.7 of the Health and Safety Code.

SEC. 104. It is the intent of the Legislature that, in implementing Section 14105.33 of the Welfare and Institutions Code during the 2002–03 fiscal year, the Director of Health Services shall direct the department to negotiate as aggressively as necessary to achieve savings levels related to pharmaceutical contracting identified in the Budget Act of 2002.

SEC. 105. 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. 106. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to make necessary statutory changes to implement the Budget Act of 2002 at the earliest possible time, it is necessary that this act go into immediate effect.

CHAPTER 1162

An act to add Section 701.1 to the Financial Code, relating to financial institutions.

[Approved by Governor September 30, 2002. Filed with Secretary of State September 30, 2002.]

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

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

(a) The economic strength and general welfare of California depends on strong and sound financial institutions that command the highest levels of public confidence among the citizens of this state.

(b) California financial institutions are highly monitored and closely supervised by federal and state regulatory agencies that impose strict compliance standards and conduct regular and frequent examinations of those institutions.

(c) The Banking Law, as amended by Chapter 105 of the Statutes of 2000 (Senate Bill 2148), reclassified industrial loan companies as industrial banks, otherwise subject to all laws and regulations pertaining to commercial banks, except the prohibition against offering demand deposits.

(d) The chairman of the Federal Reserve Board, in congressional testimony, and many other noted economists, experts, and government officials have noted the dangers of mixing banking and general commerce. Clarification of California public policy with regard to mixing of banking and commerce and to the acquisition of control of California industrial banks is desirable to assure continued public confidence in these institutions.

(e) It is therefore the intent of the Legislature to address these concerns by creating more consistency between state and federal law.

SEC. 2. Section 701.1 is added to the Financial Code, to read:

701.1. Notwithstanding any other provision of this article, except for those persons approved by the commissioner prior to September 1, 2002, and for those persons who control industrial banks as of September 1, 2002, no person may directly or indirectly, including through any merger, consolidation, or any other type of business combination, acquire control of an industrial bank, as defined in Section 105.5, unless the person is engaged only in the activities permitted for financial holding companies, as provided in Section 103 of the federal Gramm-Leach-Bliley Act (12 U.S.C. Sec. 1843(k)(1)), or is a credit union, as defined in Section 134.5, when the industrial bank is a credit union service organization, as defined in Section 14651. Nothing in this section shall be construed to exempt a person seeking to acquire control of a bank that otherwise qualifies to do so pursuant to this section, from the requirements of Sections 700 to 711, inclusive. For the purposes of this section, the term ''control'' has the same meaning as in subdivision (b) of Section 700.

CHAPTER 1163

An act to add Section 51210.4 to, and to add Chapter 10 (commencing with Section 8990) to Part 6 of, the Education Code, relating to school nutrition, and making an appropriation therefor.

[Approved by Governor September 30, 2002. Filed with Secretary of State September 30, 2002.]

I am signing Assembly Bill 1634, which would require new curriculum development in nutrition and would create a new school garden grant program.

I certainly share the author's belief in the importance of nutrition education. Many studies have demonstrated that infancy, toddler years, and early childhood are the most important developmental states for children. During these early years of a child's development, it is essential to establish healthy eating and exercise patterns.

As evidenced by a letter to the Assembly Journal, the author intended that the $200,000 appropriation contained in this bill would be a subset of an appropriation contained in the Budget Act for similar purposes. While she has committed to carrying cleanup language next year to rectify the error, a more expeditious remedy is for me to strike the $200,000 appropriation from this legislation.

Lastly, it is my intent that the State Department of Education will develop the nutrition curricula and related best practices from existing departmental resources.

With that understanding, I am pleased to sign this legislation, but am vetoing the $200,000 appropriation.

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) Recent evidence shows that infancy, toddler years, and early childhood are the most important developmental stages for establishing healthy eating and exercise patterns. These patterns can provide optimal growth and cognitive development and prevent a lifetime of obesity and nutrition-related diseases.

(b) Poor diet and physical inactivity are the leading preventable causes of cancer and the second actual cause of premature death, following tobacco use. Nutrition education is an effective way of developing healthy eating patterns among pupils. For this reason, one of the health promotion objectives of the United States Department of Health and Human Services is to increase the number of schools that provide nutrition education in preschool, kindergarten, and grades 1 to 12, inclusive.

(c) Approximately 8 percent of all preschool age children are overweight and one-third of overweight preschool children remain overweight as adults. In 1999, the federal Centers for Disease Control and Prevention (CDC): National Center for Health Statistics found that the percentage of children and adolescents who are overweight has more than doubled in the last 30 years.

(d) At the University of California, San Diego, Medical School in 2000–01, it has been found that by the age of 12, 30 to 60 percent of children in the United States show at least one risk factor of cardiovascular disease. Increasingly, overweight and obese children are experiencing health risks previously thought of as adult medical issues, such as Type 2 diabetes, high blood pressure, high cholesterol levels, asthma, and certain cancers. Eating habits and exercise patterns are most often established during early childhood.

(e) Approximately 70 percent of girls, and 40 percent of boys, 6 to 12 years of age do not have enough muscle strength to do more than one pullup. Most children lead inactive lives. According to the Third National Health and Nutrition Examination Survey conducted by the CDC: National Center for Health Statistics, 33 percent of children in the United States watch four or more hours of television each day.

(f) The family plays a primary role in fostering eating and exercise habits. A family that practices good nutrition and exercises regularly increases the health and well-being of the child dramatically. Healthy eating patterns and physical activity are essential for long-term health, and because they have the potential to last a lifetime, it is important to learn the benefits of good nutrition and regular exercise. Yet, children's physical activity and eating habits have deteriorated over the last three decades.

(g) Children of all socioeconomic levels are at risk for poor nutrition. According to the National Health/Education Consortium, some children do not get enough to eat each day because their families lack money to buy sufficient food. Other children consume enough food, but have diets high in fat, sugar, and sodium that put them at risk for obesity or heart disease and other chronic illnesses. Furthermore, as the number of parents in the workforce increases, more children are being left to fend for themselves for meals.

(h) Pupils who are involved in nutrition education have the opportunity to make healthy food and lifestyle choices. As a setting for nutrition education, schools are an excellent site because they reach almost all children and their nutrition programs offer opportunities to practice healthy eating habits.

(i) Health and success in school are interrelated. Schools cannot achieve their primary mission of education if pupils are not healthy and fit physically, mentally, and socially. Credible studies indicate that alarming proportions of young people engage in behaviors that put them at risk of serious health problems. In addition, the leading health authorities recommend that schools take an active role in preventing disabling chronic health conditions that create misery and consume a burdensome share of the nation's resources.

(j) The link between nutrition and learning is well documented. Healthy eating patterns are essential for pupils to achieve their full academic potential, full physical and mental growth, and lifelong health and well-being. Healthy eating is demonstrably linked to reduced risk for mortality and development of many chronic diseases as adults. Schools have a responsibility to help pupils and staff establish and maintain lifelong, healthy eating patterns. Well-planned and well-implemented school nutrition programs have been shown to positively influence pupils' eating habits.

(k) School garden programs, one way of integrating nutrition education into schools, give pupils an interactive educational experience to learn about food, nutrition, California specialty crops, and healthy eating. These programs also offer pupils a deeper understanding and appreciation for the role of agriculture in California, the world economy, the environment, the community, and each other.

(*l*) School gardens are a feasible setting for hands-on, integrated learning at urban, suburban, or rural schools whether the gardens are indoor or outdoor container gardens, raised-bed gardens set on asphalt or gardens that are incorporated into the schools' existing landscaping. Instructional school gardens provide an environmental context for interdisciplinary teaching education standards. A number of schools are working to integrate mathematics, science, language arts, social studies, health, and art into a garden-based curriculum.

(m) There is a clear connection between nutrition and learning. Research shows that physical and mental well-being are prerequisites for achieving educational success. Well-nourished and healthy children have better attendance at school, concentrate better in class, and achieve improved academic performance. Instructional school gardens provide the opportunity for classrooms to create healthy snacks from the garden and provide school food service programs to incorporate garden produce into meals and snacks as well as return the trimmings to a compost bin for future soil enrichment.

(n) Garden salad bars provide a choice of fresh fruits and vegetables as part of the school lunch program. Fruits and vegetables on garden salad bars increase pupil participation in the National School Lunch Program. A school garden salad bar is a vehicle to launch a school compost program in a district and reinforce garden curricula. Children who learn to enjoy the variety of vegetables and fruits grown in California may carry this healthy habit into adulthood. In addition, garden-based education can develop agricultural and environmental awareness in pupils as they care for the garden, build networks between the school and the community, and promote intergenerational transfer of information and culture.

SEC. 2. Chapter 10 (commencing with Section 8990) is added to Part 6 of the Education Code, to read:

CHAPTER 10. SCHOOL NUTRITION

Article 1. Nutrition Education

8990. The Legislature encourages nutritional education instructional activities that comply with all of the following:

(a) They emphasize the appealing aspects of healthy eating.

(b) They are participatory, developmentally appropriate, and enjoyable.

(c) They engage families as partners in their children's education.

(d) They encourage teachers responsible for nutrition education, who have received nutrition instruction during their credentialing program, to be adequately prepared and regularly participate in professional development activities to effectively deliver the nutrition education program as planned. Preparation and professional development activities should provide basic knowledge of nutrition, combined with skill practice in program-specific activities and instructional techniques and strategies designed to promote healthy eating habits.

8993. The Legislature encourages school instructional staff to do the following:

(a) Be informed about the negative consequences of using food as a reward and of withholding food from pupils as punishment.

(b) The need to closely coordinate with the food service program and other components of the school health program in order to integrate nutrition concepts into the instruction of other subject areas.

(c) Cooperate with other agencies and community groups to provide opportunities for pupil volunteer work related to nutrition, such as assisting with food recovery efforts and preparing nutritious meals for house-bound people.

(d) Collaborate with agencies and groups conducting nutrition education in the community to send consistent messages to pupils and their families. Guest speakers invited to address pupils shall receive appropriate orientation to the relevant policies of the district.

(e) Disseminate information to parents, guardians, pupils, and staff about community programs that offer nutrition assistance to families.

(f) Model healthy eating behaviors.

8995. The Legislature encourages school administrations to do the following:

(a) Offer wellness programs that include personalized instruction about healthy eating and physical activity.

(b) Ensure that the nutrition services, health services, and social services children need in order to learn are provided at the schoolsite or in cooperation with other community agencies.

8996. As used in this article the following terms have the following meanings:

(a) ''Dietary Guidelines for Americans'' means the current set of recommendations of the federal government that are designed to help people choose diets that will meet nutrient requirements, promote health, support active lives, and reduce chronic disease risks.

(b) ''Nutrition education'' means a planned sequential instructional program that provides knowledge and teaches skills to help pupils adopt and maintain lifelong, healthy eating patterns.

8997. This chapter shall become operative on July 1, 2004.

Article 2. Garden Programs

9000. The Legislature intends to expand the number of educational gardens and garden salad bars in California public schools by offering startup or expansion grants, implementing garden-enhanced nutrition education, and training and resources to the grantees. For those purposes, the school gardens program is hereby established.

9001. The State Department of Education shall establish, develop, and implement the instructional school garden program to make competitive grants available for school districts and county offices of education. Schools may incorporate one of the following into the nutrition education program proposal:

(a) An instructional school garden if a garden does not already exist on the site.

(b) A school garden salad bar with a compost program if an instructional garden already exists onsite.

(c) An instructional school garden if an instructional garden does not already exist on the schoolsite and a school garden salad bar with a compost program.

9002. The State Department of Education shall distribute the grants pursuant to subdivision (a) or (b), in consultation with education, nutrition, and agricultural experts, at the applicant's election, as follows:

(a) A maximum of one thousand dollars ($1,000) to each school that establishes instructional school gardens and an additional five hundred dollars ($500) as a workshop travel stipend to each school district that receives a grant.

(b) A maximum of two thousand dollars ($2,000), available on a competitive basis as determined by the State Department of Education, to each school that has an existing instructional garden onsite, and that would offer a garden salad in the school lunch program with these funds.

9003. The State Department of Education shall develop, research, and coordinate the best available practices regarding appropriate curriculum for school garden programs in kindergarten and grades 1 to 12, inclusive, in consultation with education, nutrition, and agricultural experts. The department shall make the curriculum available to the schools that receive a grant pursuant to this article.

9004. (a) The sum of two hundred thousand dollars ($200,000) is hereby appropriated from the United States Department of Agriculture Specialty Crop Block Grant funds in the Federal Trust Fund to the department for the purposes of this article pursuant to the following schedule:

(1) A sum not to exceed one hundred twenty-six thousand dollars ($126,000) for the purposes of awarding grants for at least 70 school district instructional gardens pursuant to Sections 9001 and 9002.

(2) A sum not to exceed seventy-four thousand dollars ($74,000) for the purposes of developing, researching, and coordinating the best available practices regarding appropriate curriculum for school garden programs pursuant to Section 9003.

(b) An amount not to exceed 10 percent of the sum set forth in subdivision (a) may be used for the administrative costs of the department in implementing this article.

(c) The State Department of Education shall select grant recipients from the northern, southern, and central regions of the state and from urban, rural, and suburban areas, so that the recipients are broadly representatives of the state.

SEC. 3. Section 51210.4 is added to the Education Code, to read:

51210.4. The State Department of Education shall incorporate nutrition education curriculum content into the health curriculum framework at its next revision. This curriculum shall focus on pupils' eating behaviors, be based on theories and methods proven effective by published research. Nutrition education shall be designed to help pupils learn all of the following:

(a) Nutritional knowledge, including but not limited to, the benefits of healthy eating, essential nutrients, nutritional deficiencies, principles of healthy weight management, the use and misuse of dietary supplements, and safe food preparation, handling, and storage.

(b) Nutrition-related skills, including, but not limited to, planning a healthy meal, understanding and using food labels, and critically evaluating nutrition information, misinformation, and commercial food advertising.

(c) How to assess their own personal eating habits, set goals for improvement, and achieve those goals by using the Food Guide Pyramid, Dietary Guidelines for Americans, Nutrition Fact Labels, and

the Physical Activity Pyramid.

CHAPTER 1164

An act to repeal Section 103 of Assembly Bill 442 of the 2001–02 Regular Session, relating to health, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 30, 2002. Filed with Secretary of State September 30, 2002.]

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

SECTION 1. Section 103 of Assembly Bill 442 of the 2001–02 Regular Session is repealed.

SEC. 2. Section 1 of this act shall be operative only if Assembly Bill 442 of the 2001–02 Regular Session is enacted on or before January 1, 2003.

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

In order to make necessary statutory changes to implement the Budget Act of 2002 at the earliest possible time, it is necessary that this act take effect immediately.

CHAPTER 1165

An act to add Sections 11139.6, 11139.7, and 11139.8 to the Government Code, relating to public employment and contracting.

[Approved by Governor September 30, 2002. Filed with Secretary of State September 30, 2002.]

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

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

(a) Proposition 209, enacted by the voters on November 5, 1996, amended the California Constitution by adding Section 31 to Article I thereof to ban discrimination or preferential treatment based on race,

ethnicity, and gender in the operation of public employment, public education, and public contracting.

(b) It is the intent of the Legislature to reaffirm diversity as a public policy goal in public contracting and public employment.

(c) California's ability to compete will suffer if talented, skilled business professionals and workers from any segment of the labor pool are excluded from employment or denied contracting opportunities because of discrimination or exclusion.

(d) In an August 1, 2000, report by the Governor's Task Force on Diversity and Outreach, the Task Force recommended the state's outreach efforts should ensure all sectors of California's workforce are informed of state employment openings.

(e) It is the intent of this act to emphasize and clarify that Section 31 of Article I does not prohibit governmental agencies from fashioning outreach programs in ways that will yield diverse results in public employment and public contracting.

(f) It is further the intent of the Legislature to clarify permissible outreach strategies to accomplish the diversity goal.

SEC. 2. Section 11139.6 is added to the Government Code, to read:

11139.6. (a) (1) The Legislature finds and declares that subdivision (a) of Section 31 of Article I of the California Constitution prohibits state and local government agencies from discriminating against or granting preferential treatment to any individual or group on the basis of race, sex, color, ethnicity, or national origin in the operation of public employment, public education, and public contracting. The Legislature finds that this prohibition does not prevent governmental agencies from engaging in inclusive public sector outreach and recruitment programs that, as a component of general recruitment, may include, but not be limited to, focused outreach and recruitment of minority groups and women if any group is underrepresented in entry level positions of a public sector employer.

(2) The Legislature also finds and declares that increasing the number of businesses that participate in the bidding process in public contracting results in more vigorous competition, and thus assists state and local agencies in obtaining the desired quality of work at a lower cost.

(3) It is the intent of this section that all governmental agencies shall engage in general recruitment and outreach programs to all individuals, including persons who are economically disadvantaged.

(b) For purposes of this section, underrepresentation shall be determined by comparing the minority group or the number of women at the governmental agency with that group's representation in the current civilian labor force in the jurisdiction of the governmental agency.

(c) State government employment shall use current state civilian labor force data to implement this section.

(d) It is the intent of this section to allow public sector employers to conduct outreach efforts with a goal of supplementing word-of-mouth recruitment that should result in increasing diversity of the public sector workforce.

(e) The type of recruitment activities allowed would include, but not be limited to, placement of job announcements in the following media instruments:

(1) General circulation newspapers, general circulation publications, and general market radio and television stations, including electronic media.

(2) Local and regional community newspapers.

(3) Newspapers, publications, and radio and television stations that provide information in languages other than English and whose primary audience is residents of minority and low-income communities.

(4) Publications, including electronic media, that are distributed to the general market and to newspapers, publications, and radio and television stations whose primary audience is comprised of minority groups or women.

(5) Recruitment booths at job fairs or conferences oriented to both the general market and the economically disadvantaged as well as those events drawing a significant participation by minorities or women.

SEC. 3. Section 11139.7 is added to the Government Code, to read:

11139.7. (a) The Governor's Task Force on Diversity and Outreach, in its August 1, 2000, report, concluded that data on minority business participation is not currently available, and that lack of useful data on minority business participation in state contracting is an overarching issue to be addressed.

(b) In contracting for and procuring goods, services, information technology, construction, architecture, and engineering consulting, and other consulting services, state and local departments and agencies are authorized to engage in focused outreach activities in addition to general outreach, for purposes of increasing participation by California's small business sector and increasing diversity in the state's contracting and procurement activities.

(c) Outreach activities may include, but are not limited to, the following:

(1) Invitations to bid distributed by state and local departments and agencies to state and local small business and trade associations and chambers of commerce, including ethnic chambers of commerce, and other business and professional associations, including professional minority, women, and disabled veteran-owned business and professional groups and associations, as appropriate.

(2) Publication of advertising concerning state and local contracting and procurement opportunities in trade papers and other publications focusing on small business enterprises, including publications and newspapers in languages other than English and those whose primary readership is minority, women, or disabled veteran-owned businesses.

(3) Outreach by small business advocates in each state or local government department or agency to state and local small business and trade associations and chambers of commerce, including ethnic chambers of commerce, and other business and professional associations, including professional minority, women, and disabled veteran-owned business and professional groups and associations, as appropriate.

SEC. 4. Section 11139.8 is added to the Government Code, to read:

11139.8. Notwithstanding any other provision of law, commencing January 1, 2003, each state department or agency awarding a contract or procuring goods or services shall, and each local agency receiving state funds may, collect information and report to the Governor and the Legislature on the level of participation by minority, women, and disabled veteran-owned business enterprises in contract and procurement activities as identified in this section. The reports shall be submitted annually, on or before July 1 of each year, and shall include dollar values of contract awards for the following categories of contractors:

(a) Construction.

(b) Architecture and engineering and other professional services.

(c) Procurement of materials, supplies, and equipment.

(d) Information technology procurements.

CHAPTER 1166

An act to amend Sections 33126, 33350, 51241, 52057, and 60800 of the Education Code, relating to public schools.

[Approved by Governor September 30, 2002. Filed with Secretary of State September 30, 2002.]

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

SECTION 1. The Legislature finds and declares the following:

(a) The State Department of Education has reported that a majority of this state's children are not physically fit and are not vigorously active on a regular basis.

(b) Exercise and fitness have been shown to do all of the following:

(1) Lower the risk of heart disease.
(2) Lower the risk of hypertension.
(3) Lower the risk of diabetes.
(4) Prevent bone loss.
(5) Decrease the risk of some cancers.
(6) Reduce stress.

(c) Exercise and fitness activities can increase self-esteem, boost energy, strengthen the heart and muscles, burn calories, and lower cholesterol levels.

(d) Fitness activities have been shown to sharpen mental ability in all people and retard the aging process.

(e) School districts are encouraged to help pupils improve their understanding of the need for good nutrition and physical fitness that together result in improved mental and physical health. School districts are encouraged to help all pupils improve their fitness in a holistic manner through instruction and daily schoolsite practices.

(f) Physical education should approach each pupil in a holistic manner, taking into account their diverse abilities and interests in order to capture the potential for each pupil to develop a life plan of healthy living.

(g) Physical education is an integral component of a balanced and comprehensive school program. Physical education provides curricula and instruction that helps pupils develop knowledge, attitudes, skills, behavior, and motivation needed to be physically active for life.

SEC. 2. Section 33126 of the Education Code is amended to read:

33126. (a) The School Accountability Report Card shall provide data by which parents can make meaningful comparisons between public schools enabling them to make informed decisions on which school to enroll their children.

(b) The School Accountability Report Card shall include, but is not limited to, assessment of the following school conditions:

(1) (A) Pupil achievement by grade level, as measured by the standardized testing and reporting programs pursuant to Article 4 (commencing with Section 60640) of Chapter 5 of Part 33.

(B) Pupil achievement in and progress toward meeting reading, writing, arithmetic, and other academic goals, including results by grade level from the assessment tool used by the school district using percentiles when available for the most recent three-year period.

(C) After the state develops a statewide assessment system pursuant to Chapter 5 (commencing with Section 60600) and Chapter 6 (commencing with Section 60800) of Part 33, pupil achievement by grade level, as measured by the results of the statewide assessment.

(D) Secondary schools with high school seniors shall list both the average verbal and math Scholastic Assessment Test scores to the extent

provided to the school and the percentage of seniors taking that exam for the most recent three-year period.

(2) Progress toward reducing dropout rates, including the one-year dropout rate listed in the California Basic Education Data System or any successor data system for the schoolsite over the most recent three-year period, and the graduation rate, as defined by the State Board of Education, over the most recent three-year period when available pursuant to Section 52052.

(3) Estimated expenditures per pupil and types of services funded.

(4) Progress toward reducing class sizes and teaching loads, including the distribution of class sizes at the schoolsite by grade level, the average class size, and, if applicable, the percentage of pupils in kindergarten and grades 1 to 3, inclusive, participating in the Class Size Reduction Program established pursuant to Chapter 6.10 (commencing with Section 52120) of Part 28, using California Basic Education Data System or any successor data system information for the most recent three-year period.

(5) The total number of the school's fully credentialed teachers, the number of teachers relying upon emergency credentials, the number of teachers working without credentials, and any assignment of teachers outside their subject areas of competence for the most recent three-year period.

(6) Quality and currency of textbooks and other instructional materials, including whether textbooks and other materials meet state standards and have been adopted by the State Board of Education for kindergarten and grades 1 to 8, inclusive, and adopted by the governing boards of school districts for grades 9 to 12, inclusive, and the ratio of textbooks per pupil and the year the textbooks were adopted.

(7) The availability of qualified personnel to provide counseling and other pupil support services, including the ratio of academic counselors per pupil.

(8) Availability of qualified substitute teachers.

(9) Safety, cleanliness, and adequacy of school facilities.

(10) Adequacy of teacher evaluations and opportunities for professional improvement, including the annual number of schooldays dedicated to staff development for the most recent three-year period.

(11) Classroom discipline and climate for learning, including suspension and expulsion rates for the most recent three-year period.

(12) Teacher and staff training, and curriculum improvement programs.

(13) Quality of school instruction and leadership.

(14) The degree to which pupils are prepared to enter the workforce.

(15) The total number of instructional minutes offered in the school year, separately stated for each grade level, as compared to the total

number of the instructional minutes per school year required by state law, separately stated for each grade level.

(16) The total number of minimum days, as specified in Sections 46112, 46113, 46117, and 46141, in the school year.

(17) The number of advanced placement courses offered, by subject.

(18) The Academic Performance Index, including the disaggregation of subgroups as set forth in Section 52052 and the decile rankings and a comparison of schools.

(19) Whether a school qualified for the Immediate Intervention Underperforming Schools Program pursuant to Section 52053 and whether the school applied for, and received a grant pursuant to, that program.

(20) Whether the school qualifies for the Governor's Performance Award Program.

(21) When available, the percentage of pupils, including the disaggregation of subgroups as set forth in Section 52052, completing grade 12 who successfully complete the high school exit examination, as set forth in Sections 60850 and 60851, as compared to the percentage of pupils in the district and statewide completing grade 12 who successfully complete the examination.

(22) Contact information pertaining to any organized opportunities for parental involvement.

(23) For secondary schools, the percentage of graduates who have passed course requirements for entrance to the University of California and the California State University pursuant to Section 51225.3 and the percentage of pupils enrolled in those courses, as reported by the California Basic Education Data System or any successor data system.

(24) Whether the school has a college admission test preparation course program.

(25) The aggregate results of the physical performance testing administered pursuant to Section 60800.

(c) It is the intent of the Legislature that schools make a concerted effort to notify parents of the purpose of the school accountability report cards, as described in this section, and ensure that all parents receive a copy of the report card; to ensure that the report cards are easy to read and understandable by parents; to ensure that local educational agencies with access to the Internet make available current copies of the report cards through the Internet; and to ensure that administrators and teachers are available to answer any questions regarding the report cards.

SEC. 3. Section 33350 of the Education Code is amended to read:

33350. The State Department of Education shall do all of the following:

(a) Adopt rules and regulations that it deems necessary and proper to secure the establishment of courses in physical education in the elementary and secondary schools.

(b) Compile or cause to be compiled and printed a manual in physical education for distribution to teachers in the public schools of the state.

(c) Encourage school districts offering instruction in kindergarten and any of grades 1 to 12, inclusive, to the extent that resources are available, to provide quality physical education that develops the knowledge, attitudes, skills, behavior, and motivation needed to be physically active for life; to provide daily recess periods for elementary school pupils, featuring time for unstructured but supervised play; to provide extracurricular physical activity programs and physical activity clubs; and to encourage the use of school facilities for physical activity programs offered by the school or community-based organizations outside of school hours.

SEC. 4. Section 51241 of the Education Code is amended to read:

51241. (a) The governing board of any school district or the office of the county superintendent of schools of any county may grant temporary exemption to a pupil from courses in physical education, if the pupil is one of the following:

(1) Ill or injured and a modified program to meet the needs of the pupil cannot be provided.

(2) Enrolled for one-half, or less, of the work normally required of full-time pupils.

(b) The governing board of any school district or the office of the county superintendent of schools of any county may, with the consent of a pupil, if the pupil has passed the physical performance test administered in the 9th grade pursuant to Section 60800, grant the pupil exemption from courses in physical education for two years any time during grades 10 to 12, inclusive.

(c) The governing board of any school district or the office of the county superintendent of any county may grant permanent exemption from courses in physical education if the pupil complies with any one of the following:

(1) Is 16 years of age or older and has been enrolled in the 10th grade for one academic year or longer.

(2) Is enrolled as a postgraduate pupil.

(3) Is enrolled in a juvenile home, ranch, camp, or forestry camp school where pupils are scheduled for recreation and exercise pursuant to the requirements of Section 4346 of Title XV of the California Administrative Code.

(d) No pupil exempted under subdivision (b) or paragraph (1) of subdivision (c) shall be permitted to attend fewer total hours of courses and classes if he or she elects not to enroll in a physical education course

than he or she would have attended if he or she had elected to enroll in a physical education course.

(e) Notwithstanding any other provision of law, the governing board of a school district may also administer to pupils in grades 10 to 12, inclusive, the physical performance test required in 9th grade pursuant to Section 60800. A pupil who passes this physical performance test in any of grades 10 to 12, inclusive, is eligible for an exemption pursuant to subdivision (b).

SEC. 5. 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. In addition to any other criteria that are used to determine whether a school shall be classified as a distinguished

school, the Superintendent of Public Instruction may consider the performance of a school on the physical performance tests administered pursuant to Section 60800.

(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. 5.5. 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 English learner, 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 English learner, 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. In addition to any other criteria that are used to determine whether a school shall be classified as a distinguished school, the Superintendent of Public Instruction may consider the performance of a school on the physical performance tests administered pursuant to Section 60800.

(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. 6. Section 60800 of the Education Code is amended to read:

60800. (a) During the month of February, March, April, or May, the governing board of each school district maintaining any of grades 5, 7,

and 9 shall administer to each pupil in those grades the physical performance test designated by the State Board of Education. Each physically handicapped pupil and each pupil who is physically unable to take all of the physical performance test shall be given as much of the test as his or her condition will permit.

(b) Upon request of the State Department of Education, a school district shall submit to the department, at least once every two years, the results of its physical performance testing.

(c) The State Department of Education shall compile the results of the physical performance test and submit a report every two years, by December 31, to the Legislature and Governor that standardizes the data, tracks the development of high-quality fitness programs, and compares the performance of California's pupils with national performance, to the extent that funding is available.

(d) Pupils shall be provided with their individual results after completing the physical performance testing.

(e) The governing board of a school district shall report the aggregate results of its physical performance testing administered pursuant to this section in their annual school accountability report card required by Sections 33126 and 35256.

SEC. 7. The Legislature finds and declares that this act furthers the purposes of the Classroom Instructional Improvement and Accountability Act.

SEC. 8. Section 5.5 of this bill incorporates amendments to Section 52057 of the Education Code proposed by both this bill and AB 741. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2003, (2) each bill amends Section 52057 of the Education Code, and (3) this bill is enacted after AB 741, in which case Section 5 of this bill shall not become operative.

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.

CHAPTER 1167

An act to amend Sections 10554, 41203.1, 42238, 42238.12, 42238.44, 44515, 44955.5, 47634.5, 48005.10, 48005.13, 48005.15,

48005.25, 48005.30, 48005.35, 48005.45, 48005.55, 53075, 54201, 56836.158, 70000, 99234, 99235, 99240, and 99242 of, to add Sections 42238.445, 42238.46, and 54205 to, and to add and repeal Section 52263.5 of, the Education Code, to add Section 17581.5 to the Government Code, and to amend Section 5701.3 of the Welfare and Institutions Code, relating to school finance, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 30, 2002. Filed with Secretary of State September 30, 2002.]

I am signing Assembly Bill 2781. However, I am reducing the portion of the appropriation for school district revenue limit equalization by $203,000,000 that is based on revenue limits prior to the re-benching of excused absences in 1997–98. I intend to set this amount aside for subsequent legislation that accomplishes the intent of legislation I signed last year (Chapter 165, Statutes of 2001), which established a statewide equalization goal.

Let me be clear. I am fully committed to providing full funding for equalization in the 2003–04 Budget Year. However, I am opposed to the formula used to determine equalization funding in this bill. By splitting equalization into disparate allocation methods, as proposed by AB 2781, the State does not actually reach an equalized endpoint. Consequently, this bill creates continued pressure to fund further rounds of equalization in future years. It is estimated that an additional $195 million to $200 million would still be required to fully equalize revenue limits computed on the basis of current state policy. As mentioned above, I intend to sign subsequent legislation that appropriates up to $203,000,000 to complete full equalization consistent with the current statutory goal. That subsequent legislation should also delete Section 7 and subdivision (c) of Section 42 of this statute to conform.

Further, I am reducing the appropriation for the Standardized Testing and Reporting (STAR) program by $800,000 to correct an unintentional overappropriation of the item.

The effect of my actions are reflected as follows:

SEC. 44. The sum appropriated in Item 6110-113-0001 of Section 2.00 of the Budget Act of 2002 is hereby augmented by forty-five million eight hundred nine thousand dollars ($45,809,000) and the amount appropriated in Schedule (4) of that item is augmented by forty-five million eight hundred nine thousand dollars ($45,809,000).

SEC. 51. (a) The amount of two hundred three million dollars ($203,000,000) is hereby appropriated from the General Fund to the Superintendent of Public Instruction for the 2003–04 fiscal year for the following purposes:

(1) Two hundred three million dollars ($203,000,000) for purposes of Section 42238.44 of the Education Code, to be allocated to school districts on a pro rata basis.

(b) For purposes of making the computations required by Section 8 of Article XVI of the California Constitution, the appropriation made by this section shall be deemed to be "General Fund revenues appropriated to schools districts," as defined in subdivision (c) of Section 41202 of the Education Code for the 2003–04 fiscal year and be included within the "total allocations to schools district and community college districts from General Fund proceeds of taxes appropriated pursuant to Article XVII B," as defined in subdivision (e) of Section 41202 of the Education Code for the 2003–04 fiscal year.

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, 2004.

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 2002–03 fiscal year, inclusive.

SEC. 3. Section 42238 of the Education Code is amended to read:

42238. (a) For the 1984–85 fiscal year and each fiscal year thereafter, the county superintendent of schools shall determine a revenue limit for each school district in the county pursuant to this section.

(b) The base revenue limit for the current fiscal year shall be determined by adding to the base revenue limit for the prior fiscal year the following amounts:

(1) The inflation adjustment specified in Section 42238.1.

(2) For the 1995–96 fiscal year, the equalization adjustment specified in Section 42238.4.

(3) For the 1996–97 fiscal year, the equalization adjustments specified in Sections 42238.41, 42238.42, and 42238.43.

(4) For the 1985–86 fiscal year, the amount received per unit of average daily attendance in the 1984–85 fiscal year pursuant to Section 42238.7.

(5) For the 1985–86, 1986–87, and 1987–88 fiscal years, the amount per unit of average daily attendance received in the prior fiscal year pursuant to Section 42238.8.

(6) For the 2003–04 fiscal year, the equalization adjustments specified in Sections 42238.44 and 42238.46.

(c) Except for districts subject to subdivision (d), the base revenue limit computed pursuant to subdivision (b) shall be multiplied by the district average daily attendance computed pursuant to Section 42238.5.

(d) (1) For districts for which the number of units of average daily attendance determined pursuant to Section 42238.5 is greater for the current fiscal year than for the 1982–83 fiscal year, compute the following amount, in lieu of the amount computed pursuant to subdivision (c):

(A) Multiply the base revenue limit computed pursuant to subdivision (c) by the average daily attendance computed pursuant to Section 42238.5 for the 1982–83 fiscal year.

(B) Multiply the lesser of the amount in subdivision (c) or 1.05 times the statewide average base revenue limit per unit of average daily attendance for districts of similar type for the current fiscal year by the difference between the average daily attendance computed pursuant to Section 42238.5 for the current and 1982–83 fiscal years.

(C) Add the amounts in subparagraphs (A) and (B).

(2) This subdivision shall become inoperative on July 1, 1998.

(e) For districts electing to compute units of average daily attendance pursuant to paragraph (3) of subdivision (a) of Section 42238.5, the amount computed pursuant to Article 4 (commencing with Section 42280) shall be added to the amount computed in subdivision (c) or (d), as appropriate.

(f) For the 1984–85 fiscal year only, the county superintendent shall reduce the total revenue limit computed in this section by the amount of the decreased employer contributions to the Public Employees' Retirement System resulting from enactment of Chapter 330 of the Statutes of 1982, offset by any increase in those contributions, as of the 1983–84 fiscal year, resulting from subsequent changes in employer contribution rates.

(g) The reduction required by subdivision (f) shall be calculated as follows:

(1) Determine the amount of employer contributions that would have been made in the 1983–84 fiscal year if the applicable Public Employees' Retirement System employer contribution rate in effect

immediately prior to the enactment of Chapter 330 of the Statutes of 1982 were in effect during the 1983–84 fiscal year.

(2) Subtract from the amount determined in paragraph (1) the greater of subparagraph (A) or (B):

(A) The amount of employer contributions that would have been made in the 1983–84 fiscal year if the applicable Public Employees' Retirement System employer contribution rate in effect immediately after the enactment of Chapter 330 of the Statutes of 1982 were in effect during the 1983–84 fiscal year.

(B) The actual amount of employer contributions made to the Public Employees' Retirement System in the 1983–84 fiscal year.

(3) For purposes of this subdivision, employer contributions to the Public Employees' Retirement System for any of the following shall be excluded from the calculation specified above:

(A) Positions supported totally by federal funds that were subject to supplanting restrictions.

(B) Positions supported by funds received pursuant to Section 42243.6.

(C) Positions supported, to the extent of employer contributions not exceeding twenty-five thousand dollars ($25,000) by any single educational agency, from a revenue source determined on the basis of equity to be properly excludable from the provisions of this subdivision by the Superintendent of Public Instruction with the approval of the Director of Finance.

(4) For accounting purposes, the reduction made by this subdivision may be reflected as an expenditure from appropriate sources of revenue as directed by the Superintendent of Public Instruction.

(h) The Superintendent of Public Instruction shall apportion to each school district the amount determined in this section less the sum of:

(1) The district's property tax revenue received pursuant to Chapter 3 (commencing with Section 75) and Chapter 6 (commencing with Section 95) of Part 0.5 of the Revenue and Taxation Code.

(2) The amount, if any, received pursuant to Part 18.5 (commencing with Section 38101) of the Revenue and Taxation Code.

(3) The amount, if any, received pursuant to Chapter 3 (commencing with Section 16140) of the Government Code.

(4) Prior years' taxes and taxes on the unsecured roll.

(5) Fifty percent of the amount received pursuant to Section 41603.

(6) The amount of motor vehicle license fees distributed pursuant to Section 11003.4 of the Revenue and Taxation Code.

(7) The amount, if any, received pursuant to any provision of the Community Redevelopment Law (Part 1 (commencing with Section 33000) of Division 24 of the Health and Safety Code), except for any amount received pursuant to Section 33401 or 33676 of the Health and

Safety Code that is used for land acquisition, facility construction, reconstruction, or remodeling, or deferred maintenance, except for any amount received pursuant to Section 33492.15, paragraph (4) of subdivision (a) of Section 33607.5, or Section 33607.7 of the Health and Safety Code that is allocated exclusively for educational facilities.

(8) For a unified school district, other than a unified school district that has converted all of its schools to charter status pursuant to Section 47606, the amount of statewide average general-purpose funding per unit of average daily attendance received by school districts for each of four grade level ranges, as computed by the State Department of Education pursuant to Section 47633, multiplied by the average daily attendance, in corresponding grade level ranges, of any pupils who attend charter schools funded pursuant to Chapter 6 (commencing with Section 47630) of Part 26.8 for which the district is the sponsoring local educational agency, as defined in Section 47632, and who reside in and would otherwise have been eligible to attend a noncharter school of the district.

(i) No transfer of seventh and eighth grade pupils between an elementary school district and a high school district shall result in the receiving district receiving a revenue limit apportionment for those pupils that exceeds 105 percent of the statewide average revenue limit for the type and size of the receiving school district.

SEC. 4. 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 through the Budget Act of 2001 or legislation amending the Budget Act of 2001 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 shall be allocated on a one-time basis 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) Funding appropriated pursuant to Provision 1 of Item 6110-223-0001 of Section 2.00 of the Budget Act of 2002 for the purpose of limiting the reductions to revenue limits calculated pursuant to this section and to Section 2558 for the 2002–03 fiscal year shall be allocated on a one-time basis 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 2002–03 fiscal year as compared to the statewide total reduction that would occur absent this paragraph.

(2) For the 2002–03 fiscal year, in lieu of the alternative calculation authorized by paragraph (1), the San Francisco Unified School District shall receive an amount equal to five dollars and fifty-seven cents ($5.57) multiplied by its second principal apportionment average daily attendance for the 2002–03 fiscal year.

(3) Notwithstanding any other provision of law, total allocations pursuant to this subdivision shall not exceed thirty-six million dollars ($36,000,000).

(d) Thirty-five million dollars ($35,000,000) is hereby appropriated from the General Fund for transfer to Section A of the State School Fund for local assistance for the purpose of limiting the reductions to revenue limits calculated pursuant to this section and to Section 2558 for the 2003–04 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 appropriated in this subdivision that is proportionate to the reduction in their apportionment pursuant to this section or to Section 2558 for the 2003–04 fiscal year as compared to the statewide total reduction that would occur absent this paragraph.

(2) For the 2003–04 fiscal year, in lieu of the alternative calculation authorized by paragraph (1), the San Francisco Unified School District shall receive an amount equal to five dollars and fifty-seven cents ($5.57) multiplied by its second principal apportionment average daily attendance for the 2003–04 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) for the 2003–04 fiscal year.

(4) For the purposes of making the computations required by Section 8 of Article XVI of the California Constitution, the appropriation made by this section shall be deemed to be ''General Fund revenues appropriated for school districts,'' as defined in subdivision (c) of Section 41202 of the Education Code, for the 2003–04 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 2003–04 fiscal year.

(d) For the 2004–05 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 2004–05 fiscal year as compared to the statewide total reduction as would occur absent this paragraph.

(2) 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 (c) 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 (c) 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. 5. 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 2003–04 fiscal year, the Superintendent of Public Instruction shall compute an equalization adjustment for each school district, so that no district's 2002–03 base revenue limit per unit of average daily attendance is less than the 2002–03 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 2003–04 fiscal year.

(2) Divide the amount appropriated for purposes of this section for the 2003–04 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 2002–03 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 2002–03 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 2002–03 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. 6. Section 42238.445 is added to the Education Code, immediately following Section 42238.44, to read:

42238.445. (a) (1) For the 2002–03 fiscal year, the Superintendent of Public Instruction shall compute an equalization adjustment for each school district by determining the amount that would be necessary to assure that no district's 2001–02 base revenue limit per unit of average daily attendance is less than the 2001–02 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 (b).

(2) For purposes of this section, the district base revenue limit and the statewide average base revenue limit shall not include any amounts attributable to Section 45023.4, 46200, or 46201.

(b) Subdivision (a) shall apply to the following school districts, which shall be grouped according to size and type as follows:

District	ADA
Elementary	less than 101
Elementary	more than 100
High School	less than 301
High School	more than 300
Unified	less than 1,501
Unified	more than 1,500

(c) The Superintendent of Public Instruction shall determine and allocate, on a one-time basis, an amount for each school district as follows:

(1) Multiply the amount computed for each school district pursuant to subdivision (a) by the average daily attendance used to calculate the district's revenue limit for the 2002–03 fiscal year.

(2) Divide forty-two million dollars ($42,000,000) appropriated pursuant to Provision 2 of Item 6110-223-0001 of Section 2.00 of the Budget Act of 2002 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) by the amount computed pursuant to paragraph (2).

(d) (1) For the purposes of this section, the 2001–02 statewide 90th percentile base revenue limit determined pursuant to paragraph (1) of subdivision (a), and the fraction computed pursuant to paragraph (2) of subdivision (c) for the 2001–02 second principal apportionment, shall be final, and shall not be recalculated at subsequent apportionments. The fraction computed pursuant to paragraph (2) of subdivision (c) shall not,

under any circumstances, exceed 1.00. For purposes of determining the size of a school district pursuant to subdivision (b), county superintendents of schools, in conjunction with the Superintendent of Public Instruction, shall use school district revenue limit average daily attendance for the 2001–02 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 (b), 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 (a), 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.

(e) Allocations pursuant to this section do not represent adjustments to school district base revenue limits.

SEC. 7. Section 42238.46 is added to the Education Code, to read:

42238.46. (a) For the 2003–04 fiscal year, the Superintendent of Public Instruction, shall compute an equalization adjustment for each school district so that no district's 2002–03 adjusted base revenue limit per unit of average daily attendance is less than the 2002–03 fiscal year adjusted base revenue limit above which fall not more that 8.25 percent of the total statewide units of average daily attendance for the appropriate size and type of district listed in subdivision (b).

For purposes of this section, the district adjusted base revenue limit and the statewide average adjusted base revenue limit shall not include any amounts attributable to Section 45023.4, 46200, or 46201.

(b) Subdivision (a) shall apply to the following school districts, which shall be grouped according to size and type as follows:

District	ADA
Elementary	less than 101
Elementary	more than 100
High School	less than 301
High School	more than 300
Unified	less than 1,501
Unified	more than 1,500

(c) The Superintendent of Public Instruction shall compute a revenue limit equalization adjustment for each school district's adjusted base revenue limit per unit of average daily attendance as follows:

(1) Add the products of the amount computed for each school district by the county superintendent pursuant to subdivision (a) and 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 current fiscal year by the amount computed pursuant to paragraph (1).

(3) Multiply the amount computed for the school district pursuant to subdivision (a) by the amount computed pursuant to paragraph (2).

(d) (1) For purposes of this section only, prior to computing the equalization adjustment pursuant to this section, the Superintendent of Public Instruction shall calculate an adjusted base revenue limit for each district by revising the 2002–03 base revenue limit of the district to eliminate that portion of the one-time adjustment to its base revenue limit related to excused absences made pursuant to Section 42238.8.

(2) For the purposes of this section, the 2002–03 statewide average adjusted base revenue limits determined for the purposes of subdivision (a) and the fraction computed pursuant to paragraph (2) of subdivision (c) by the Superintendent of Public Instruction for the 2002–03 second principal apportionment shall be final, and shall not be recalculated at subsequent apportionments. In no event shall the fraction computed pursuant to paragraph (2) of subdivision (c) exceed 1.00. For the purposes of determining the size of a district used in subdivision (b), county superintendents of schools, in conjunction with the Superintendent of Public Instruction, shall use a school district's revenue limit average daily attendance for the 2002–03 fiscal year as determined pursuant to Section 42238.5 and Article 4 (commencing with Section 42280).

(3) For the purposes of calculating the size of a school district pursuant to subdivision (b), the Superintendent of Public Instruction shall include units of average daily attendance of any charter school for which the school district if the chartering agency.

(4) For the purposes of computing the target amounts pursuant to subdivision (a), the Superintendent of Public Instruction shall count all charter school average daily attendance towards the average daily attendance of the school district that is the chartering agency.

SEC. 8. Section 44515 of the Education Code is amended to read:

44515. (a) Program funding is intended to serve 50 percent of the total number of public school principals and vice principals in each of the 2002–03 and 2003–04 fiscal years.

(b) A local education agency shall receive program funding to train up to 50 percent of its schoolsite administrators in the 2002–03 fiscal year and the remainder in the 2003–04 fiscal year.

(c) If all of the statewide funding is not expended in a fiscal year, it may be redistributed on a pro rata basis to local education agencies that have served more than the proportion specified in subdivision (a) of their schoolsite administrators during that fiscal year.

(d) It is the intent of the Legislature that a local education agency give highest priority to training administrators assigned to, and practicing in, low-performing or hard-to-staff schools.

SEC. 9. Section 44955.5 of the Education Code is amended to read:

44955.5. (a) During the time period between five days after the enactment of the Budget Act and August 15 of the fiscal year to which that Budget Act applies, if the governing board of a school district determines that its total revenue limit per unit of average daily attendance for the fiscal year of that Budget Act has not increased by at least 2 percent, and if in the opinion of the governing board it is therefore necessary to decrease the number of permanent employees in the district, the governing board may terminate the services of any permanent or probationary certificated employees of the district, including employees holding a position that requires an administrative or supervisory credential. The termination shall be pursuant to Sections 44951 and 44955 but, notwithstanding anything to the contrary in Sections 44951 and 44955, in accordance with a schedule of notice and hearing adopted by the governing board.

(b) This section is inoperative from July 1, 2002, to July 1, 2003, inclusive.

SEC. 10. Section 47634.5 of the Education Code is amended to read:

47634.5. (a) The Director of Finance shall compute and provide to the Superintendent of Public Instruction within 30 days of the enactment of the Budget Act of 1999 the percentage change calculated based on the Budget Act of 1999 and accompanying statutes in the following:

(1) The total amount of state funding per unit of average daily attendance received by kindergarten and grades 1 to 12, inclusive, local educational agencies in 1998–99 for purposes that apply toward meeting the requirements of Section 8 of Article XVI of the California Constitution for any fiscal year, exclusive of funding for school district revenue limits, county offices of education, adult education, child development programs, special education, Economic Impact Aid, and programs for which a charter school is required to apply separately.

(2) The total amount of state funding per unit of average daily attendance appropriated in the Budget Act of 1999 and related implementing legislation for kindergarten and grades 1 to 12, inclusive, local educational agencies for purposes which count toward meeting the requirements of Section 8 of Article XVI of the California Constitution for any fiscal year, exclusive of funding for school district revenue limits, charter schools' general-purpose entitlements, county offices of education, adult education, child development programs, special education, Economic Impact Aid, and programs for which a charter school is required to apply separately.

(b) Commencing in 2000, the Director of Finance shall annually compute and provide as part of the May revision to the Governor's Budget the percentage change in the following:

(1) The total amount of state funding per unit of average daily attendance received by kindergarten and grades 1 to 12, inclusive, local educational agencies in 1998–99 for purposes which count toward meeting the requirements of Section 8 of Article XVI of the California Constitution for any fiscal year, exclusive of funding for school district revenue limits, county offices of education, adult education, child development programs, special education, Economic Impact Aid, and programs for which a charter school is required to apply separately.

(2) The total amount of state funding per unit of average daily attendance proposed to be appropriated in the following year for kindergarten and grades 1 to 12, inclusive, local educational agencies in the budget year for purposes which count toward meeting the requirements of Section 8 of Article XVI of the California Constitution for any fiscal year, exclusive of funding for school district revenue limits, charter schools' general-purpose entitlements, county offices of education, adult education, child development programs, special education, Economic Impact Aid, and programs for which a charter school is required to apply separately.

(c) (1) Notwithstanding subdivision (b), commencing in 2002, the Director of Finance shall annually compute and provide to the Superintendent of Public Instruction within 30 days of the enactment of the annual Budget Act the cumulative percentage change between the amounts calculated pursuant to subparagraphs (A) and (B).

(A) The total amount of state funding per unit of average daily attendance received by kindergarten and grades 1 to 12, inclusive, local educational agencies in 1998–99 for purposes that count toward meeting the requirements of Section 8 of Article XVI of the California Constitution for any fiscal year, exclusive of funding for school district revenue limits, county offices of education, adult education, child development programs, special education, Economic Impact Aid, and programs for which a charter school is required to apply separately.

(B) The total amount of state funding per unit of average daily attendance appropriated in the annual Budget Act and related implementing legislation for kindergarten and grades 1 to 12, inclusive, to local educational agencies for purposes that count toward meeting the requirements of Section 8 of Article XVI of the California Constitution for that fiscal year, exclusive of funding for school district revenue limits, charter schools' general-purpose entitlements, county offices of education, adult education, child development programs, special education, Economic Impact Aid, and programs for which a charter school is required to apply separately. The Director of Finance shall not

include in the calculation made to determine the amount required pursuant to this paragraph reappropriations of funding that previously counted toward meeting the requirements of Section 8 of Article XVI of the California Constitution for any fiscal year.

(2) As part of providing the calculation required pursuant to paragraph (1), the Department of Finance shall provide the State Department of Education with a comprehensive list of categorical programs that are included in the Charter School Categorical Block Grant.

SEC. 11. Section 48005.10 of the Education Code is amended to read:

48005.10. (a) This article shall be known, and may be cited, as the Kindergarten Readiness Pilot Program.

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

(1) The available data indicate all of the following:

(A) By changing the age at which children generally enter kindergarten, California's children will be better prepared to enter into the academic environment that is required by the California content standards for kindergarten.

(B) Success in school is often related to socioeconomic status, English language fluency at school entry, and access to preschool. By providing a kindergarten readiness program for the children most at risk for low performance and delaying entry to allow all children time to become more developmentally ready to learn, pupils are more likely to succeed in school.

(C) Comparisons between California pupils and pupils in other states on national achievement tests in the later grades are likely to be more equitable if the entry age of California pupils is more closely aligned to that of most other states.

(D) Children who have attended an educationally based kindergarten readiness program, including, but not limited to, a quality state preschool, Head Start, or kindergarten readiness program, are better prepared academically and socially for the existing kindergarten curriculum, as reflected by the state adopted standards.

(2) The purpose of the pilot project established pursuant to this article is intended to test these data.

(3) For participating school districts, the change in enrollment required pursuant to this article will result in a decrease in the number of pupils enrolled in kindergarten classes for the class entering kindergarten in the 2003–04 school year. Thus, it is estimated that in participating school districts there will be a 25 percent decrease in the enrollment of the kindergarten class in the initial year of implementation.

(4) The school district revenue related provision of this article in Section 48005.30 is intended to fully fund participation in the program and provide an incentive to participate.

SEC. 12. Section 48005.13 of the Education Code is amended to read:

48005.13. (a) The Superintendent of Public Instruction shall establish and administer the Kindergarten Readiness Pilot Program to permit school districts to provide opportunities for children to enhance their readiness for kindergarten, thereby increasing their likelihood for future academic success.

(b) The Superintendent of Public Instruction shall convene an advisory panel to assist the department in developing its request for proposals, and in evaluating and selecting the proposals submitted to the department. The advisory panel shall include, but need not be limited to, a representative of each of the following:

(1) The Department of Finance.

(2) The Legislature.

(3) The California Research Bureau.

(4) The Legislative Analyst.

(5) The State Board of Education.

(6) The Secretary for Education.

(c) By February 1, 2003, the superintendent shall notify elementary and unified school districts maintaining kindergarten about the existence of this program, shall notify them about the procedures for participation, and shall request proposals for participation.

(d) Participation in the program by a school district shall be voluntary.

(e) A school district that elects to participate in the program shall apply to the Superintendent of Public Instruction by May 1, 2003, upon forms adopted by the superintendent for this purpose.

(f) The Superintendent of Public Instruction, with the advice of the advisory panel, and in consultation with the Secretary for Education, shall select participants from the group of applicants. The Superintendent of Public Instruction shall give priority to applicant school districts that are representative of the diversity of pupils and of the various types of school districts within the state. Priority shall, also, be given to unified school districts.

(g) Nothing in this article prohibits a school district from implementing the program in selected schools within the district if adequate records are kept to substantiate the accuracy of the declining enrollment incentive and limits on prekindergarten instruction funding provided pursuant to Section 48005.30.

SEC. 13. Section 48005.15 of the Education Code is amended to read:

48005.15. By July 1, 2003, each participant school district shall enter into an agreement with the Superintendent of Public Instruction setting forth the requirements under the program, including, but not limited to, all of the following:

(a) The participating school district shall make reasonable efforts to identify parents and guardians of children from three to five years of age who reside within the school district and to provide the parents and guardians with information regarding, and access to, services, programs, or methods, to assist them in assessing the level of readiness of a child to enter school.

(b) The effort set forth in paragraph (1) shall include, but need not be limited to, information regarding available care services, preschool programs, and educationally based kindergarten readiness programs. The school district may coordinate this effort with local parent-teacher organizations.

(c) ''Reasonable effort'' as used in this subdivision does not require that the school district individually contact every potential parent who resides within the school district.

(d) The school district shall provide assistance to parents or guardians who request assistance regarding activities that parents may initiate in preparing children for school.

(e) At a minimum, participating school districts shall supply parents or guardians with written readiness guidelines developed by the State Department of Education.

(f) Assistance provided pursuant to this section shall be based on generally accepted child development theory and may include information related to social and development readiness and professional consultations with teachers and school administrators.

(g) The participating school district shall make reasonable efforts to collect data and make it available to the independent evaluator, as specified in Section 48005.45.

SEC. 14. Section 48005.25 of the Education Code is amended to read:

48005.25. (a) Notwithstanding any provision of law to the contrary, including, but not limited to, Section 48000, for the 2003–04 school year, and each school year thereafter in which a school district continues to participate in the program, the school district shall offer admission to kindergarten at the beginning of the school year, or at a later time in the same school year, only to children who will have their fifth birthday on or before September 1 of that school year. For a school district that is not implementing the pilot project authorized by this article on a districtwide basis, this subdivision applies only to children whose residence is in the regular attendance boundary of a participating school or who would otherwise attend that school under school

assignment policies established in the school year prior to implementation of this pilot program.

(b) Notwithstanding any provision of law to the contrary, including, but not limited to, Section 48010, for the 2004–05 school year, and each school year thereafter in which a school district continues to participate in the program, a school district shall offer admission to first grade at the beginning of the school year, or at a later time in the same school year, only to children who will have their sixth birthday on or before September 1 of that school year. Kindergarten shall not be a prerequisite for enrollment in first grade pursuant to this article. For a school district that is not implementing the pilot project authorized by this article on a districtwide basis, this subdivision applies only to children whose residence is in the regular attendance boundary of a participating school or who would otherwise attend that school under school assignment policies established in the school year prior to implementation of this pilot program.

(c) Notwithstanding subdivisions (a) and (b), the governing board of each school district participating in this program shall adopt a policy to allow, for good cause, admission of a child to kindergarten or to the first grade at the beginning of a school year in which the child's birthday will be after September 1, or at a later time in the same school year. It is the intent of the Legislature that this subdivision authorize rare exceptions for only the most gifted and socially mature children. Therefore, exceptions are limited to no more than the greater of either one child or the number of children determined by multiplying .01 times the prior school year P-2 average daily attendance in kindergarten within the participating school district or the school implementing the program, as applicable. A school or school district may not exceed this limitation without specific written approval from the Superintendent of Public Instruction upon consideration of a statement by the school or school district of the circumstances that meet the legislative intent regarding this subdivision.

SEC. 15. Section 48005.30 of the Education Code is amended to read:

48005.30. (a) For the 2003–04 school year and each school year thereafter until the 2009–10 school year the Superintendent of Public Instruction shall allocate a grant of funds for a participating school district for each year of participation to cover the costs of developing and operating the school district kindergarten readiness program, including, but not limited to, the costs of administration and the costs associated with services provided to parents and children in the program. For any participating school district, annual funding pursuant to this paragraph shall be subject to the limitations and requirements of this subdivision

and shall not exceed the per-pupil amount nor the total amount computed as follows:

(1) Five dollars ($5) per hour for each hour of attendance for every child participating in the kindergarten readiness program up to a maximum of 150 hours of attendance for each child. The amount per hour shall be adjusted annually, commencing with the 2004–05 school year for the inflation adjustment calculated pursuant to subdivision (b) of Section 42238.1.

(2) For purposes of total funding to a participating school district, the amount claimed may not exceed an amount equivalent to multiplying the amount in paragraph (1) by a number equal to 50 percent of the entire kindergarten P-2 average daily attendance for the 2002–03 school year of the school district or, in a school district that is not implementing the pilot project authorized by this article on a districtwide basis, by a number equal to 50 percent of the kindergarten P-2 average daily attendance for the 2002–03 school year of the schools in the district that are implementing the program.

(b) For the 2003–04 school year, the Superintendent of Public Instruction shall allocate a one-time incentive grant to enhance transition of the school district for the reduced attendance that results from the program, to be determined by multiplying one-fourth of the kindergarten average daily attendance for the 2002–03 school year by the school district's base revenue limit per unit of average daily attendance. If a school district does not implement the program districtwide, this one-time incentive shall be determined by multiplying one-fourth of the specific portion of the district's kindergarten average daily attendance for the 2002–03 school year contributed by the implementing school or schools by the school district's base revenue limit per unit of average daily attendance.

(c) A participating school district that does not implement the program on a districtwide basis shall provide to the Superintendent of Public Instruction a statement certifying the following:

(1) P-2 average daily attendance in the implementing schools for the 2002–03 school year. The school district shall maintain these records for audit purposes. The Superintendent of Public Instruction may request documentation of the P-2 average daily attendance in schools implementing the program as deemed necessary to enforce the funding limits of this article.

(2) Attendance boundaries for the schools implementing the program will remain the same as they existed in the 2002–03 school year through the duration of the program unless the district submits an application to and receives approval from the State Board of Education. The State Board of Education shall only consider applications for attendance boundary changes for participating schools in cases where significant

population changes necessitate the opening of new schools or the closing of existing schools. In order to preserve the integrity of the evaluation required by this article, it is the intent of the Legislature that a school district applying to participate in the program on a less than districtwide basis avoid implementation of the program in schools that can reasonably be foreseen to be subject to boundary changes within the timeframe of the pilot program authorized in this article. The State Board of Education may not approve boundary changes that do not meet the requirements and intent of this paragraph.

(3) The district has established procedures that restrict attendance in nonparticipating schools of the district for children residing in the attendance boundaries of the schools implementing the program.

(d) Total incentive funding for reduced P-2 average daily attendance provided pursuant to this article shall be subject to a statewide maximum funding level equal to the equivalent of 2,300 full annual units of average daily attendance multiplied by the statewide average school district revenue limit for the 2003–04 fiscal year as determined by the Department of Finance.

SEC. 16. Section 48005.35 of the Education Code is amended to read:

48005.35. (a) A school district kindergarten readiness program operated pursuant to this article is exempt from Chapter 14 (commencing with Section 15000) and Chapter 19 (commencing with Section 17906) of Division 1 of Title 5 of the California Code of Regulations if the program meets kindergarten staffing and safety requirements.

(b) Notwithstanding any other provision of law to the contrary, including, but not limited to, subdivision (a) of Section 17285, a commercial building that does not meet the requirements of Section 17820, that is leased to a school district may, until January 1, 2004, be used as a classroom in order to accommodate programs under this article if the governing board of the school district finds that conditions of subdivision (b) of Section 17285 have been met.

(c) Any teacher participating in the kindergarten readiness program shall be a holder of a permit or credential issued by the Commission on Teacher Credentialing that authorizes instruction in kindergarten or child care and development.

SEC. 17. Section 48005.45 of the Education Code is amended to read:

48005.45. (a) The Superintendent of Public Instruction shall, by June 1, 2004, contract for an independent longitudinal evaluation regarding the effects of the change in the entry age for kindergarten and first grade pursuant to this article. In selecting the independent evaluator, awarding the contract pursuant to this section, and in monitoring

performance under the contract, the Superintendent of Public Instruction shall consult with the advisory panel convened pursuant to subdivision (b) of Section 48005.13.

(b) The evaluation shall be based upon samples of sufficient size and diversity to allow results to be reported separately for pupils of different ethnicity, socioeconomic status, and primary language, and results of the evaluation shall be so reported.

(c) The primary purpose of the evaluation is to determine whether this entry age change results in improved readiness for school and an improvement in academic achievement among participating children.

(d) The evaluation shall use representative sampling to identify the change's effects on all of the following:

(1) Academic achievement, as measured by standardized tests, as compared with pupils not participating in the program.

(2) Behavioral problems, as measured by objective data including, but not limited to, suspension and expulsion rates, as compared with pupils not participating in the program.

(3) Academic problems, as measured by referrals to special education and remedial programs, as compared with pupils not participating in the program.

(4) Age of kindergarten entry and previous educationally based preschool experience, including, but not limited to, access to child care and preschool by parents or guardians.

(5) Overall retention rates in kindergarten and in subsequent grades.

(6) Participation in remedial, supplemental, or summer school programs.

(7) Class size.

(8) Number of pupils participating in kindergarten.

(9) Number of pupils participating in the kindergarten readiness programs.

(10) Differences, if any, between programs with full preschool participation, and those with partial or no preschool.

(11) Childcare difficulties caused by the admission age change.

(12) Demographic breakdown of participants and nonparticipants, including, but not limited to, socioeconomic and ethnic demographics.

(13) Facilities difficulties, if any, encountered by participating school districts.

(14) The ability of parents to gain access to the program, disaggregated by ethnic, primary language, and socioeconomic status.

(e) It is the intent of the Legislature that funding for this evaluation be included in the Budget Act or a bill related to the Budget Act. It is the intent of the Legislature to subsequently increase the number of hours funded for the kindergarten readiness program if the reports pursuant to this section indicate that the increase would be beneficial.

(f) (1) The independent evaluator shall report to the Legislature, the Governor, the Superintendent of Public Instruction, the State Board of Education, and the Secretary for Education.

(2) The initial report shall be filed by June 1, 2006. The interim report shall be filed by January 1, 2008. The final report shall be filed by January 1, 2009.

SEC. 18. Section 48005.55 of the Education Code is amended to read:

48005.55. This article shall become inoperative on July 1, 2010, and, as of January 1, 2011, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2011, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 19. Section 52263.5 is added to the Education Code, to read:

52263.5. (a) Notwithstanding subdivision (a) of Section 52253, no technology support and staff training grants shall be provided to school districts and county offices of education for the 2002–03 fiscal year. Notwithstanding subdivision (a) of Section 52262, the Superintendent of Public Instruction may not allocate technology support and staff training grants for the 2002–03 fiscal year.

(b) It is the intent of the Legislature that the funding that would otherwise have been provided for the 2002–03 fiscal year be provided in the 2003–04 fiscal year.

(c) This section shall become inoperative on July 1, 2003, and, as of January 1, 2004, is repealed, unless a later enacted statute that is enacted before January 1, 2004, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 20. Section 53075 of the Education Code is amended to read:

53075. Subject to funding being appropriated in the annual Budget Act for this purpose, the Secretary for Education shall contract for the development and establishment of a public involvement campaign to inform Californians that promoting reading in the public schools as a key to success in life is the responsibility of all Californians. The campaign shall address, but not necessarily be limited to, promoting family reading activities, encouraging private sector support for child literacy programs, and publicizing the importance of reading skills for academic success.

Elected officials and declared candidates for partisan public office may not appear in promotional materials for the reading campaign.

SEC. 21. Section 54201 of the Education Code is amended to read:

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. For the 2001–02 fiscal year, and each fiscal year thereafter, the total amount a school district shall receive in any fiscal year is at a minimum the same total amount it received in the 2000–01 fiscal year adjusted annually pursuant to Section 42238.1.

SEC. 22. Section 54205 is added to the Education Code, to read:

54205. (a) For a basic aid district that was entitled to reimbursement pursuant to Section 42247.4, as that section read on January 1, 2001, and that received an apportionment pursuant to subdivision (h) of Section 42247.4, as that section read on January 1, 2001, because a court order directs pupils to transfer to that district as part of the court-ordered voluntary pupil transfer program, the Superintendent of Public Instruction, commencing with the 2001–02 fiscal year, shall calculate an apportionment of state funds for that basic aid district that provides 70 percent of the district revenue limit calculated pursuant to Section 42238 that would have been apportioned to the school district from which the pupils were transferred for the average daily attendance of any pupils credited under that court order who did not attend the basic aid school district prior to the 1995–96 fiscal year.

(b) For purposes of this section, ''basic aid district'' means a school district that does not receive from the state, for any fiscal year in which this section is applied, an apportionment of state funds pursuant to subdivision (h) of Section 42238.

SEC. 23. Section 56836.158 of the Education Code is amended to read:

56836.158. (a) (1) 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.

(2) The superintendent shall distribute the amount appropriated for purposes of this section from the Budget Act of 2001. The superintendent shall divide that amount of funding by the amount calculated in paragraph (1).

(3) For each special education local plan area, the superintendent shall permanently increase the amount per unit of average daily attendance determined pursuant to paragraph (2) of Section 56836.10 for the 2001–02 fiscal year by the quotient determined pursuant to paragraph (2) of this section. This increase shall be effective beginning in the 2001–02 fiscal year.

(4) Notwithstanding paragraph (3), 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 paragraph (2) of Section 56836.10 by the ratio of the amount determined pursuant to paragraph (2) 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.

(5) 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 paragraph (2).

(b) (1) The superintendent shall determine the statewide total average daily attendance used for the purposes of Section 56836.08 for the 2001–02 fiscal year. For the purposes of this calculation, the 2001–02 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.

(2) The superintendent shall distribute the amount appropriated for purposes of this section from the Budget Act of 2002. The superintendent shall divide that amount of funding by the amount calculated in paragraph (1).

(3) For each special education local plan area, the superintendent shall permanently increase the amount per unit of average daily attendance determined pursuant to paragraph (2) of Section 56836.10 for the 2002–03 fiscal year by the quotient determined pursuant to paragraph (2). This increase shall be effective commencing in the 2002–03 fiscal year.

(4) Notwithstanding paragraph (3), 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 paragraph (2) of Section 56836.10 by the ratio of the amount determined pursuant to paragraph (2) to the statewide target per unit of average daily attendance determined pursuant to Section 56836.11 for the 2001–02 fiscal year. This increase shall be effective commencing in the 2002–03 fiscal year.

(5) The superintendent shall increase the statewide target per unit of average daily attendance determined pursuant to Section 56836.11 for the 2002–03 fiscal year by the amount determined pursuant to paragraph (2).

SEC. 31. Section 70000 of the Education Code is amended to read:

70000. (a) The Governor's Teaching Fellowships Program is hereby established to be administered by the Chancellor's office of the California State University. The chancellor's office shall collaborate with the University of California, the California Community Colleges, the Association of Independent California Colleges and Universities, the State Department of Education, and the Commission on Teacher Credentialing to ensure that access to the fellowships is available to students in a variety of teaching preparation programs.

(b) In January 2001, 250 nonrenewable graduate teaching fellowships in the amount of twenty thousand dollars ($20,000) each shall be awarded, with funds disbursed one-half in January 2001 and one-half in September 2001.

(c) During the 2001–02 fiscal year, 1,000 nonrenewable, graduate teaching fellowships in the amount of twenty thousand dollars ($20,000) each shall be awarded.

(d) Commencing with the 2002–03 fiscal year and each fiscal year thereafter, the number of fellowships awarded shall be determined pursuant to an appropriation in the annual Budget Act for this purpose.

(e) The fellowship award may be used to defer tuition for a teacher certification program at any accredited postsecondary institution in California and for living expenses while enrolled in that program.

SEC. 33. Section 99234 of the Education Code is amended to read:

99234. (a) The Superintendent of Public Instruction shall notify local education agencies that they are eligible to receive an incentive award for up to 3 percent of eligible teachers in the 2002–03 fiscal year, up to 3 percent in the 2003–04 fiscal year, up to 2.4 percent in the 2004–05 fiscal year, up to 2.7 percent in the 2005–06 fiscal year, and up to 1.3 percent in the 2006–07 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).

SEC. 34. Section 99235 of the Education Code is amended to read:

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 29 percent of its instructional aides and paraprofessionals who directly assist with classroom instruction in mathematics and reading in the 2004–05 fiscal year and up to 14.5 percent in the 2005–06 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 9,600 over the two 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.

SEC. 35. Section 99240 of the Education Code is amended to read:

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, 2005, 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.

SEC. 36. Section 99242 of the Education Code is amended to read:

99242. This article shall become inoperative on July 1, 2006, and, as of January 1, 2007, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2007, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 37. Section 17581.5 is added to the Government Code, to read:

17581.5. (a) A school district shall not be required to implement or give effect to the statutes, or portion thereof, identified in subdivision (b) during any fiscal year and for the period immediately following that fiscal year for which the Budget Act has not been enacted for the subsequent fiscal year if all of the following apply:

(1) The statute or portion thereof, has been determined by the Legislature, the commission, or any court to mandate a new program or higher level of service requiring reimbursement of local agencies pursuant to Section 6 of Article XIIIB of the California Constitution.

(2) The statute, or portion thereof, has been specifically identified by the Legislature in the Budget Act for the fiscal year as being one for which reimbursement is not provided for that fiscal year. For purposes of this paragraph, a mandate shall be considered to have been specifically identified by the Legislature only if it has been included within the schedule of reimbursable mandates shown in the Budget Act and it is specifically identified in the language of a provision of the item providing the appropriation for mandate reimbursements.

(b) This section applies only to the following mandates:

(1) The School Bus Safety II mandate (Chapter 642 of the Statutes of 1992; Chapter 831 of the Statutes of 1994; and Chapter 739 of the Statutes of 1997).

(2) The School Crimes Reporting II mandate (Chapter 759 of the Statutes of 1992 and Chapter 410 of the Statutes of 1995).

SEC. 38. Section 5701.3 of the Welfare and Institutions Code is amended to read:

5701.3. Consistent with the annual Budget Act, this chapter shall not affect the responsibility of the state to fund psychotherapy and other mental health services required by Chapter 26.5 (commencing with Section 7570) of Division 7 of Title 1 of the Government Code, and the state shall reimburse counties for all allowable costs incurred by counties in providing services pursuant to that chapter. The reimbursement provided pursuant to this section for purposes of Chapter 26.5 (commencing with Section 7570) of Division 7 of Title 1 of the Government Code shall be provided by the state through an appropriation included in either the annual Budget Act or other statute. Counties shall continue to receive reimbursement from specifically appropriated funds for costs necessarily incurred in providing psychotherapy and other mental health services in accordance with this chapter. For reimbursement claims for services delivered in the 2001–02 fiscal year and thereafter, counties are not required to provide any share of those costs or to fund the cost of any part of these services with money received from the Local Revenue Fund established by Chapter 6 (commencing with Section 17600) of Part 5 of Division 9.

SEC. 39. (a) 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, 6110-189-0001, 6110-190-0001, 6110-191-0001, 6110-196-0001, 6110-234-0001, and 6110-235- 0001 of Section 2.00 of the Budget Act of 2002, and those items identified in

subdivision (b) of Section 12.40 of the Budget Act of 2002 shall be 2 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.

(b) Notwithstanding Section 42238.1 of the Education Code for purposes of Sections 2550 and 42238 of the Education Code, for the 2002–03 fiscal year, the cost-of-living adjustment shall be 2 percent.

SEC. 40. Before funds are disbursed to reimburse school districts for claims related to costs incurred from July 1, 1995, to June 30, 2002, inclusive, pursuant to former Section 38048 of, and Sections 39831.3 and 39831.5 of, the Education Code, and Section 22112 of the Vehicle Code, known as the School Bus Safety II mandate, the Commission on State Mandates shall amend the parameters and guidelines for the School Bus Safety II mandate (Ch. 624, Stats. 1992; Ch. 831, Stats. 1994; and Ch. 739, Stats. 1997) to specify that costs associated with implementation of transportation plans are not reimbursable and to detail the documentation necessary to support reimbursement claims under this mandate. In identifying the necessary documentation, the commission shall consult with the Bureau of State Audits and the Controller's Office. In addition to applying to costs incurred in the 2002–03 fiscal year and each fiscal year thereafter, the parameters and guidelines amended pursuant to this section shall apply to claims related to costs incurred from July 1, 1995, to June 30, 2002, inclusive.

SEC. 41. Notwithstanding any other provision of law, with respect to the handicapped and disabled students state-mandated local program, county reimbursement claims submitted to the Controller for reimbursement for services associated with providing, pursuant to Chapter 26.5 (commencing with Section 7570) of Division 7 of Title 1 of the Government Code, allowable mental health treatment services required by an individualized education program in fiscal years up to and including the 2000–01 fiscal year are not subject to dispute by the Controller's office regarding the percentage of reimbursement claimed by any county. A county that previously submitted a reimbursement claim for services delivered in the 2000–01 fiscal year or prior for less than 100 percent of the allowable mental health treatment services to special education pupils may not amend its claim for 100 percent or other percentage of those same allowable costs. This paragraph does not abridge the right of the Controller to otherwise dispute claims on the basis of allowable costs. With the exception of those costs claimed in excess of what is allowable, claims shall be fully paid at the percentage originally submitted.

SEC. 42. (a) If the appropriation in the 2002–03 fiscal year for purposes of Section 42238.445 of the Education Code pursuant to Provision 2 of Item 6110-223-0001 of Section 2.00 of the Budget Act

of 2002 is insufficient to provide funding equal to the amount computed pursuant to Section 42238.445 of the Education Code, the amount appropriated shall be allocated to school districts on a pro rata basis.

(b) If the appropriation in the 2003–04 fiscal year for purposes of Section 42238.44 of the Education Code is insufficient to provide funding equal to the amount computed pursuant to Section 42238.44 of the Education Code, the amount appropriated shall be allocated to school districts on a pro rata basis.

(c) If the appropriation in the 2003–04 fiscal year for purposes of Section 42238.46 of the Education Code is insufficient to provide funding equal to the amount computed pursuant to Section 42238.46 of the Education Code, the amount appropriated shall be allocated to school districts on a pro rata basis.

SEC. 43. The sum appropriated in Item 6110-111-0001 of Section 2.00 of the Budget Act of 2002 is hereby reduced by one hundred thirty-nine million five hundred seventy-nine thousand dollars ($139,579,000), and the amount in Schedule (1) of that item is reduced by one hundred thirty-nine million five hundred seventy-nine thousand dollars ($139,579,000).

SEC. 44. The sum appropriated in Item 6110-113-0001 of Section 2.00 of the Budget Act of 2002 is hereby augmented by forty-six million six hundred nine thousand dollars ($46,609,000) and the amount appropriated in Schedule (4) of that item is augmented by forty-five million eight hundred nine thousand dollars ($45,809,000).

SEC. 45. The sum of three hundred thirteen million nine hundred eight thousand dollars ($313,908,000) is hereby appropriated for purposes of the School Improvement Programs by adding Item 6110-116-0001 to Section 2.00 of the Budget Act of 2002, to read:

6110–116–0001—For local assistance, Department of Education (Proposition 98), for transfer to Section A of the State School Fund, Program 20.60.030– School Improvement Programs, pursuant to Chapter 6 (commencing with Section 52000) of Part 28 of the Education Code		313,908,000
Schedule:		
(1) 20.60.030.010–For the purpose of making allowances for kindergarten and grades 1 to 6, inclusive	259,727,000	
(2) 20.60.030.020–For the purpose of making allowances for grades 7 to 12, inclusive	54,181,000	

Provisions:

1. From the funds appropriated in Schedule (2), the State Department of Education shall allocate $34.72 per unit of average daily attendance (ADA) generated by pupils enrolled in grades 7 and 8 to those school districts that received School Improvement Grants in the 1989–90 fiscal year at arate of $30 per unit of ADA generated by pupils enrolled in grades 7 and 8.
2. Of the funds appropriated in Schedule (1) of this item, $6,963,000 is for the purpose of providing a cost–of–living adjustment at a rate of 2.00 percent.
3. Of the funds appropriated in Schedule (2) of this item, $2,303,000 is for the purpose of providing an adjustment for increases in average daily attendance at a rate of 3,27 percent. If growth funds are insufficient, the State Department of Education may adjust the per–pupil growth rates to conform to available funds. Additionally, $1,453,000 is for the purpose of providing a cost–of–living adjustment at a rate of 2.00 percent.

SEC. 46. The sum appropriated in Item 6110-132-0001 of Section 2.00 of the Budget Act of 2002 is hereby reduced by one hundred eighty-four million three hundred ninety-nine thousand dollars ($184,399,000).

SEC. 47. The sum appropriated in Item 6110-235-0001 of Section 2.00 of the Budget Act of 2002 is hereby reduced by two hundred forty-one million seven hundred thirty-nine thousand dollars ($241,739,000).

SEC. 48. Notwithstanding paragraph (5) of subdivision (a) of, and subdivision (b) of, Section 14041 of the Education Code, or any other provision of law, for the purpose of apportioning funds from the State School Fund for Home to School Transportation, pursuant to Article 10 (commencing with Section 41850) of Chapter 5 of Part 24 of the Education Code, and School Improvement Programs, pursuant to Chapter 6 (commencing with Section 52000) of Part 28 of the Education Code, as part of the special purpose apportionment in the 2002–03 fiscal year only, the warrants drawn by the Controller, pursuant to Section 14041 of the Education Code, in the months of September to November, inclusive, shall include one-seventh of the estimated total amounts of the portion of the special purpose apportionment for the programs identified in this section, as determined by the Superintendent of Public

Instruction. Warrants in December shall include one-seventh of the amounts certified by the Superintendent of Public Instruction as the portion of the special purpose apportionment for the programs identified in this section, as adjusted, if necessary, to correct excesses or deficiencies in the estimates made for purposes of the warrants in the months of September to November, inclusive. An additional one-seventh of the amounts of the portion of the special purpose apportionment for the programs identified in this section shall be included in the warrants for the months from January to March, inclusive.

SEC. 49. Notwithstanding paragraph (5) of subdivision (a) of, and subdivision (b) of, Section 14041 of the Education Code, or any other provision of law, for the purpose of apportioning funds from the State School Fund for Economic Impact Aid, pursuant to Article 2 (commencing with Section 54020) of Chapter 1 of Part 29 of the Education Code and Article 4 (commencing with Section 54040) of Chapter 1 of Part 29 of the Education Code, as part of the special purpose apportionment in the 2002–03 fiscal year only, the warrants drawn by the Controller, pursuant to Section 14041 of the Education Code, in the months of September to November, inclusive, shall include one-tenth of the estimated total amounts of the portion of the special purpose apportionment for the programs identified in this section, as determined by the Superintendent of Public Instruction. Warrants in December shall include one-tenth the portion of the special purpose apportionment for the programs identified in this section, as adjusted, if necessary, to correct excesses or deficiencies in the estimates made for purposes of the warrants in the months of September to November, inclusive. An additional one-tenth of the amounts of the portion of the special purpose apportionment for the programs identified in this section shall be included in the warrants for the months from January to June, inclusive.

SEC. 50. (a) The sum of six hundred eighty-one million dollars ($681,000,000) is hereby appropriated from the General Fund in the 2003-04 fiscal year according to the following schedule:

(1) The sum of one hundred fifteen million two hundred eighty-three thousand dollars ($115,283,000) to the State Department of Education for the School Improvement Programs pursuant to Chapter 6 (commencing with Section 52000) of Part 28 of the Education Code, to be expended consistent with the requirements specified in Item 6110-116-0001 of Section 2.00 of the Budget Act of 2002. Of the amount appropriated in this provision, ninety five million three hundred eighty-five thousand dollars ($95,385,000) shall be expended consistent with Schedule (1) of Item 6110-116-0001 of Section 2.00 of the Budget Act of 2002, and nineteen million eight hundred ninety-eight thousand

dollars ($19,898,000) shall be expended consistent with Schedule (2) of Item 6110-116-0001 of Section 2.00 of the Budget Act of 2002.

(2) The sum of one hundred thirty-nine million five hundred seventy-nine thousand dollars ($139,579,000) to the State Department of Education for Home to School Transportation pursuant to Article 10 (commencing with Section 41850) of Chapter 5 of Part 24 of the Education Code, to be expended consistent with the requirements specified in Schedule (1) of Item 6110-111-0001 of Section 2.00 of the Budget Act of 2002.

(3) The sum of one hundred eighty-four million three hundred ninety-nine thousand dollars ($184,399,000) to the State Department of Education for the Targeted Instructional Improvement Grant pursuant to Chapter 2.5 (commencing with Section 54200) of Part 29 of the Education Code, to be expended consistent with the requirements specified in Item 6110-132-0001 of Section 2.00 of the Budget Act of 2002.

(4) The sum of two hundred forty-one million seven hundred thirty-nine thousand dollars ($241,739,000) to the State Department of Education for supplemental grants pursuant to Sections 54761.2 and 54761.3 of the Education Code, to be expended consistent with the requirements specified in Item 6110-235-0001 of Section 2.00 of the Budget Act of 2002.

(b) For the purposes of making the computations required by Section 8 of Article XVI of the California Constitution, the appropriation made by subdivision (a) shall be deemed to be ''General Fund revenues appropriated for school districts,'' as defined in subdivision (d) of Section 41202 of the Education Code, for the 2003–04 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 2003–04 fiscal year.

SEC. 51. (a) The amount of four hundred six million dollars ($406,000,000) is hereby appropriated from the General Fund to the Superintendent of Public Instruction for the 2003–04 fiscal year for the following purposes:

(1) Two hundred three million dollars ($203,000,000) for purposes of Section 42238.44 of the Education Code, to be allocated to school districts on a pro rata basis.

(2) Two hundred three million dollars ($203,000,000) for purposes of Section 42238.46 of the Education Code, to be allocated to school districts on a pro rata basis.

(b) For purposes of making the computations required by Section 8 of Article XVI of the California Constitution, the appropriation made by this section shall be deemed to be ''General Fund revenues appropriated

to schools districts,'' as defined in subdivision (c) of Section 41202 of the Education Code for the 2003–04 fiscal year and be included within the "total allocations to schools district and community college districts from General Fund proceeds of taxes appropriated pursuant to Article XVII B,'' as defined in subdivision (e) of Section 41202 of the Education Code for the 2003–04 fiscal year.

SEC. 52. (a) Notwithstanding any other provision of law, the amount that is required to be appropriated for the purpose of satisfying the state's minimum funding obligation to school districts and community college districts pursuant to Section 8 of Article XVI of the California Constitution, shall, in addition to all other funds required to be appropriated to school districts, as defined in Section 41302.5 of the Education Code, and community college districts, be increased by twenty million nine hundred thirty thousand dollars ($20,930,000) for the 2003–04 fiscal year.

(b) For the purposes of making the computations required by Section 8 of Article XVI of the California Constitution, including, but not limited to, the purposes of determining 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, the amount of the state's minimum funding obligation to school districts and community college districts pursuant to Section 8 of Article XVI of the California Constitution for the 2003–04 fiscal year shall be increased by the amount determined for the 2003–04 fiscal year pursuant to subdivision (a).

(c) If, for any reason for the 2003–04 fiscal year, subparagraph (B) of paragraph (3) of subdivision (b) of Section 8 of Article XVI of the California Constitution is suspended pursuant to subdivision (h) of that section, the amount of the maintenance factor for school districts and community college districts determined pursuant to subdivisions (d) and (e) of that section as a result of that suspension, shall be computed in a manner that includes the increase to the state's minimum funding obligation to school districts and community college districts pursuant to that section that are required under subdivision (a).

SEC. 53. (a) Notwithstanding any other provision of law, in addition to the amount specified in Section 52 of this act, the amount that is required to be appropriated for the purpose of satisfying the state's minimum funding obligation to school districts and community college districts pursuant to Section 8 of Article XVI of the California Constitution, shall, in addition to all other funds required to be appropriated to school districts, as defined in Section 41302.5 of the Education Code, and community college districts, be increased by

fifty-seven million eight hundred thirty-one thousand dollars ($57,831,000) for the 2003–04 fiscal year.

(b) For the purposes of making the computations required by Section 8 of Article XVI of the California Constitution, including, but not limited to, the purposes of determining 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, the amount of the state's minimum funding obligation to school districts and community college districts pursuant to Section 8 of Article XVI of the California Constitution for the 2003–04 fiscal year shall be increased by the amount determined for the 2003–04 fiscal year pursuant to subdivision (a).

(c) If, for any reason for the 2003–04 fiscal year, subparagraph (B) of paragraph (3) of subdivision (b) of Section 8 of Article XVI of the California Constitution is suspended pursuant to subdivision (h) of that section, the amount of the maintenance factor for school districts and community college districts determined pursuant to subdivisions (d) and (e) of that section as a result of that suspension, shall be computed in a manner that includes the increase to the state's minimum funding obligation to school districts and community college districts pursuant to that section that are required under subdivision (a). The Superintendent of Public Instruction shall, by August 1, 2003, allocate the funds appropriated by this act.

SEC. 54. Notwithstanding any other provision of law, the amount that is required to be appropriated for the purpose of satisfying the state's minimum funding obligation to school districts and community college districts pursuant to Section 8 of Article XVI of the California Constitution in the 2003–04 fiscal year, shall include the full restoration of the maintenance factor.

SEC. 55. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to make the necessary statutory changes to implement the Budget Act of 2002 at the earliest possible time, it is necessary that this act take effect immediately.

CHAPTER 1168

An act to amend Sections 2557.5, 2558, 17150, 33126, 33126.1, 33128, 35120, 38133, 41023, 41031, 41032, 41033, 41035, 41038,

41303, 41372, 41403, 41404, 42127, 42127.1, 42129, 42238.12, 42241.7, 42850, 44049, 46200, 46200.5, 46202, 52054, 52055.610, 52055.640, 52055.656, 52291, 52310.5, 52314, 54743, 54745, 54746, 54747, 56001, 56100, 56129, 56130, 56200, 56205, 56345, 56361, 56392, 56441.1, 56473, 56836.155, 56836.23, 59201, 59203, 59204.5, 59210, 60451, 60453, and 60642.5 of, to amend the heading of Article 3 (commencing with Section 41030) of Chapter 1 of Part 24 of, to amend and repeal Section 49553 of, to repeal and add Section 59220 of, to amend and renumber Section 42238.146 of, to add Sections 14002.3, 35735.3, and 41407 to, and to repeal Sections 41405, 56393, 59204, 59211, and 59223 of, and to repeal Article 3.7 (commencing with Section 32230) of Chapter 2 of Part 19 of, the Education Code, to amend Section 3540.2 of, and to amend the heading of Chapter 26.5 (commencing with Section 7570) of, the Government Code, to amend Section 62 of Chapter 78 of the Statutes of 1999, and to amend Section 12.40 of Chapter 106 of the Statutes of 2001, relating to education, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 30, 2002. Filed with Secretary of State September 30, 2002.]

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

SECTION 1. Section 2557.5 of the Education Code is amended to read:

2557.5. (a) For the 1987–88 fiscal year, and each fiscal year thereafter, the revenue limit of any county superintendent of schools authorized pursuant to Section 2551 may be increased by an amount sufficient to provide additional revenue equal to the expenditure estimated to be incurred by the county superintendent of schools in the budget year in complying with the following provisions of the Unemployment Insurance Code: Sections 605 and 803, Article 6 (commencing with Section 821) of Chapter 3 of Part 1 of Division 1, or Article 3 (commencing with Section 976) of Chapter 4 of Part 1 of Division 1, less the actual expenditures incurred by the county superintendent of schools in the 1975–76 fiscal year in complying with the following provisions of the Unemployment Insurance Code: Article 6 (commencing with Section 821) of Chapter 3 of Part 1 of Division 1 and former Section 605.2.

(b) The increase in revenue limit provided in subdivision (a) shall be adjusted annually, including plus or minus adjustments for under- or over-estimating expenditures used in determining the increase in revenue limit provided by subdivision (a) in the previous fiscal year.

(c) For the 1994–95 fiscal year and each fiscal year thereafter, the amount of the increase computed pursuant to this section shall not be

adjusted by the deficit factor applied to the revenue limit of each county superintendent of schools pursuant to Section 2558.45.

(d) Expenditures for employees of charter schools funded pursuant to Article 2 (commencing with Section 47633) of Chapter 6 of Part 26.8 are excluded from the calculations set forth in this section.

SEC. 2. Section 2558 of the Education Code is amended to read:

2558. Notwithstanding any other provision of law, for the 1979–80 fiscal year and each fiscal year thereafter, the Superintendent of Public Instruction shall apportion state aid to county superintendents of schools pursuant to the provisions of this section.

(a) The Superintendent of Public Instruction shall total the amounts computed for the fiscal year pursuant to Sections 2550, 2551, 2551.3, 2554, 2555, and 2557. For the 1979–80 fiscal year and for purposes of calculating the 1979–80 fiscal year base amounts in succeeding fiscal years, the amounts in Sections 2550, 2551, 2552, 2554, 2555, and 2557, as they read in the 1979–80 fiscal year, shall be multiplied by a factor of 0.994. For the 1981–82 fiscal year and for purposes of calculating the 1981–82 fiscal year base amounts in succeeding fiscal years, the amount in this subdivision shall be multiplied by a factor of 0.97.

(b) For the 1995–96 fiscal year and each fiscal year thereafter, the county superintendent of schools shall adjust the total revenue limit computed pursuant to this section 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 county superintendent of schools as follows:

(1) Determine the amount of employer contributions that would have been made in the current fiscal year if the applicable Public Employees' Retirement System employee 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.

(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) is greater than the amount determined in paragraph (2), the total revenue limit computed pursuant to this part for that county superintendent of schools shall be decreased by the amount of the difference between those paragraphs; or if the amount determined in paragraph (1) is less than the amount determined in paragraph (2), the total revenue limit for that county

superintendent of schools shall be increased by the amount of the difference between those paragraphs.

(4) For the purposes of this subdivision, 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 paragraph (1) of subdivision (a) of Section 54203.

(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 subdivision by the Superintendent of Public Instruction with the approval of the Director of Finance. Commencing in the 2002–03 fiscal year, only positions supported from a non-General Fund revenue source determined to be properly excludable as identified for a particular local education agency or pursuant to a blanket waiver by the Superintendent of Public Instruction and the Director of Finance, prior to the 2002–03 fiscal year, may be excluded pursuant to this paragraph.

(5) For accounting purposes, any reduction to county office of education revenue limits made by this subdivision 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 county superintendents of schools made by this subdivision 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 county superintendent of schools pursuant to Section 2558.45.

(c) The Superintendent of Public Instruction shall also subtract from the amount determined in subdivision (a) the sum of: (1) local property tax revenues received pursuant to Section 2573 in the then current fiscal year, and tax revenues received pursuant to Section 2556 in the then current fiscal year, (2) state and federal categorical aid for the fiscal year, (3) district contributions pursuant to Section 52321 for the fiscal year, and other applicable local contributions and revenues, (4) any amounts that the county superintendent of schools was required to maintain as restricted and not available for expenditure in the 1978–79 fiscal year as specified in the second paragraph of subdivision (c) of Section 6 of Chapter 292 of the Statutes of 1978, as amended by Chapter 51 of the Statutes of 1979, and (5) the amount received pursuant to subparagraph (C) of paragraph (3) of subdivision (a) of Section 33607.5 of the Health and Safety Code that is considered property taxes pursuant to that section.

(d) The remainder computed in subdivision (c) shall be distributed in the same manner as state aid to school districts from funds appropriated to Section A of the State School Fund.

(e) If the remainder determined pursuant to subdivision (c) is a negative amount, no state aid shall be distributed to that county superintendent of schools pursuant to subdivision (d), and an amount of funds of that county superintendent equal to that negative amount shall be deemed restricted and not available for expenditure during the current fiscal year. In the next fiscal year, that amount shall be considered local property tax revenue for purposes of the operation of paragraph (1) of subdivision (c) of this section.

(f) The calculations set forth in paragraphs (1) to (3), inclusive, of subdivision (b) exclude employer contributions for employees of charter schools funded pursuant to Article 2 (commencing with Section 47633) of Chapter 6 of Part 26.8.

SEC. 3. Section 14002.3 of the Education Code is added to read:

14002.3. 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, and the revenue limits of county superintendents of schools, as determined pursuant to Section 2558.

(b) This section shall become operative on July 1, 2004.

SEC. 4. 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 or 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. 4.5. Article 3.7 (commencing with Section 32230) of Chapter 2 of Part 19 of the Education Code is repealed.

SEC. 5. Section 33126 of the Education Code is amended to read:

33126. (a) The school accountability report card shall provide data by which parents can make meaningful comparisons between public schools enabling them to make informed decisions on which school to enroll their children.

(b) The school accountability report card shall include, but is not limited to, assessment of the following school conditions:

(1) (A) Pupil achievement by grade level, as measured by the standardized testing and reporting programs pursuant to Article 4 (commencing with Section 60640) of Chapter 5 of Part 33.

(B) Pupil achievement in and progress toward meeting reading, writing, arithmetic, and other academic goals, including results by grade level from the assessment tool used by the school district using percentiles when available for the most recent three-year period.

(C) After the state develops a statewide assessment system pursuant to Chapter 5 (commencing with Section 60600) and Chapter 6 (commencing with Section 60800) of Part 33, pupil achievement by grade level, as measured by the results of the statewide assessment.

(D) Secondary schools with high school seniors shall list both the average verbal and math Scholastic Assessment Test scores to the extent provided to the school and the percentage of seniors taking that exam for the most recent three-year period.

(2) Progress toward reducing dropout rates, including the one-year dropout rate listed in the California Basic Education Data System or any successor data system for the schoolsite over the most recent three-year period, and the graduation rate, as defined by the State Board of Education, over the most recent three-year period when available pursuant to Section 52052.

(3) Estimated expenditures per pupil and types of services funded.

(4) Progress toward reducing class sizes and teaching loads, including the distribution of class sizes at the schoolsite by grade level, the average class size, and, if applicable, the percentage of pupils in kindergarten and grades 1 to 3, inclusive, participating in the Class Size Reduction Program established pursuant to Chapter 6.10 (commencing with Section 52120) of Part 28, using California Basic Education Data System or any successor data system information for the most recent three-year period.

(5) The total number of the school's fully credentialed teachers, the number of teachers relying upon emergency credentials, the number of teachers working without credentials, and any assignment of teachers outside their subject areas of competence for the most recent three-year period.

(6) Quality and currency of textbooks and other instructional materials, including whether textbooks and other materials meet state standards and have been adopted by the State Board of Education for kindergarten and grades 1 to 8, inclusive, and adopted by the governing boards of school districts for grades 9 to 12, inclusive, and the ratio of textbooks per pupil and the year the textbooks were adopted.

(7) The availability of qualified personnel to provide counseling and other pupil support services, including the ratio of academic counselors per pupil.

(8) Availability of qualified substitute teachers.

(9) Safety, cleanliness, and adequacy of school facilities.

(10) Adequacy of teacher evaluations and opportunities for professional improvement, including the annual number of schooldays dedicated to staff development for the most recent three-year period.

(11) Classroom discipline and climate for learning, including suspension and expulsion rates for the most recent three-year period.

(12) Teacher and staff training, and curriculum improvement programs.

(13) Quality of school instruction and leadership.

(14) The degree to which pupils are prepared to enter the workforce.

(15) The total number of instructional minutes offered in the school year, separately stated for each grade level, as compared to the total number of the instructional minutes per school year required by state law, separately stated for each grade level.

(16) The total number of minimum days, as specified in Sections 46112, 46113, 46117, and 46141, in the school year.

(17) The number of advanced placement courses offered, by subject.

(18) The Academic Performance Index, including the disaggregation of subgroups as set forth in Section 52052 and the decile rankings and a comparison of schools.

(19) Whether a school qualified for the Immediate Intervention Underperforming Schools Program pursuant to Section 52053 and whether the school applied for, and received a grant pursuant to, that program.

(20) Whether the school qualifies for the Governor's Performance Award Program.

(21) When available, the percentage of pupils, including the disaggregation of subgroups as set forth in Section 52052, completing grade 12 who successfully complete the high school exit examination, as set forth in Sections 60850 and 60851, as compared to the percentage of pupils in the district and statewide completing grade 12 who successfully complete the examination.

(22) Contact information pertaining to any organized opportunities for parental involvement.

(23) For secondary schools, the percentage of graduates who have passed course requirements for entrance to the University of California and the California State University pursuant to Section 51225.3 and the percentage of pupils enrolled in those courses, as reported by the California Basic Education Data System or any successor data system.

(24) Whether the school has a college admission test preparation course program.

(26) When available from the State Department of Education, the claiming rate of pupils who earned a Governor's scholarship award pursuant to subdivision (a) of Section 69997 for the most recent two year period. This paragraph applies only to schools that enroll pupils in grades nine, ten or eleven.

(c) It is the intent of the Legislature that schools make a concerted effort to notify parents of the purpose of the school accountability report cards, as described in this section, and ensure that all parents receive a copy of the report card; to ensure that the report cards are easy to read and understandable by parents; to ensure that local educational agencies with access to the Internet make available current copies of the report cards through the Internet; and to ensure that administrators and teachers are available to answer any questions regarding the report cards.

SEC. 6. Section 33126.1 of the Education Code is amended to read:

33126.1. (a) The State Department of Education shall develop and recommend for adoption by the State Board of Education a standardized template intended to simplify the process for completing the school accountability report card and make the school accountability report card more meaningful to the public.

(b) The standardized template shall include fields for the insertion of data and information by the State Department of Education and by local educational agencies. When the template for a school is completed, it should enable parents and guardians to compare how local schools

compare to other schools within that district as well as other schools in the state.

(c) In conjunction with the development of the standardized template, the State Department of Education shall furnish standard definitions for school conditions included in the school accountability report card. The standard definitions shall comply with the following:

(1) Definitions shall be consistent with the definitions already in place or under the development at the state level pursuant to existing law.

(2) Definitions shall enable schools to furnish contextual or comparative information to assist the public in understanding the information in relation to the performance of other schools.

(3) Definitions shall specify the data for which the State Department of Education will be responsible for providing and the data and information for which the local educational agencies will be responsible.

(d) By December 1, 2000, the State Department of Education shall report to the State Board of Education on the school conditions for which it already has standard definitions in place or under development. The report shall include a survey of the conditions for which the State Department of Education has valid and reliable data at the state, district, or school level. The report shall provide a timetable for the inclusion of conditions for which standard definitions or valid and reliable data do not yet exist through the State Department of Education.

(e) By December 1, 2000, the Superintendent of Public Instruction shall recommend and the State Board of Education shall appoint 13 members to serve on a broad-based advisory committee of local administrators, educators, parents, and other knowledgeable parties to develop definitions for the school conditions for which standard definitions do not yet exist. The State Board of Education may designate outside experts in performance measurements in support of activities of the advisory board.

(f) By January 1, 2001, the State Board of Education shall approve available definitions for inclusion in the template as well as a timetable for the further development of definitions and data collection procedures. By July 1, 2001, and each year thereafter, the State Board of Education shall adopt the template for the current year's school accountability report card. Definitions for all school conditions shall be included in the template by July 1, 2002.

(g) The State Department of Education shall annually post the completed and viewable template on the Internet. The template shall be designed to allow schools or districts to download the template from the Internet. The template shall further be designed to allow local educational agencies, including individual schools, to enter data into the school accountability report card electronically, individualize the report card, and further describe the data elements. The State Department of

Education shall establish model guidelines and safeguards that may be used by school districts secured access only for those school officials authorized to make modifications.

(h) The State Department of Education shall annually post, on the Internet, each eligible school's claiming rate of pupils who earned an award for either of the programs established by subdivision (a) of Section 69997. The Scholarshare Investment Board shall provide the claiming rates, for the most recent two-year period, for each eligible school to the State Department of Education by June 30 of each year. Schools shall post their claiming rate, required in paragraph (26) of subdivision (b) of Section 33216, from the State Department of Education Internet site.

(i) The State Department of Education shall maintain current Internet links with the Web sites of local educational agencies to provide parents and the public with easy access to the school accountability report cards maintained on the Internet. In order to ensure the currency of these Internet links, local educational agencies that provide access to school accountability report cards through the Internet shall furnish current Uniform Resource Locators for their Web sites to the State Department of Education.

(j) A school or school district that chooses not to utilize the standardized template adopted pursuant to this section shall report the data for its school accountability report card in a manner that is consistent with the definitions adopted pursuant to subdivision (c) of this section.

(k) The State Department of Education shall provide recommendations for changes to the California Basic Education Data System, or any successor data system, and other data collection mechanisms to ensure that the information will be preserved and available in the future.

(*l*) Local educational agencies shall make these school accountability report cards available through the Internet or through paper copies.

(m) The State Department of Education shall monitor the compliance of local educational agencies with the requirements to prepare and to distribute school accountability report cards.

SEC. 6.5. Section 33128 of the Education Code, as amended by Section 1 of Chapter 784 of the Statutes of 1998, is amended to read:

33128. (a) The standards and criteria to be adopted by the State Board of Education pursuant to Section 33127 shall include, but not be limited to, comparisons and reviews of the following:

(1) Average daily attendance.

(2) Revenues and expenditures.

(3) Reserves and fund balance.

(4) Multiyear commitments.

(b) Notwithstanding paragraph (3), the State Board of Education shall not adopt standards and criteria for a budget reserve for economic uncertainties in excess of 1 percent of a school district's total expenditures, transfers out, and other uses of the school district for a school district that has an average daily attendance greater than 125,000 and where the school district has, by an affirmative vote of its governing board, agreed to a budget reserve of 1 percent. For the purposes of this paragraph, ''transfers out'' and ''other uses'' of the school district shall have the same meaning as set forth in the California School Accounting Manual.

(c) This section shall become inoperative on July 1, 2004, and, as of January 1, 2005, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2005, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 6.7. Section 33128 of the Education Code, as added by Section 2 of Chapter 784 of the Statutes of 1998, is amended to read:

33128. (a) The standards and criteria to be adopted by the State Board of Education pursuant to Section 33127 shall include, but not be limited to, comparisons and reviews of the following:

(1) Average daily attendance.

(2) Revenues and expenditures.

(3) Reserves and fund balance.

(4) Multiyear commitments.

(b) This section shall become operative on July 1, 2004.

SEC. 7. Section 35120 of the Education Code is amended to read:

35120. (a) (1) In any school district in which the average daily attendance for the prior school year exceeded 400,000, each member of the city board of education or the governing board of the district who actually attends all meetings held may receive as compensation for his or her services a sum not to exceed two thousand dollars ($2,000) per month.

(2) In any school district that is not located in a city and county, and in which the average daily attendance for the prior school year exceeded 60,000, the governing board may prescribe, as compensation for the services of each member of the board who actually attends all meetings held, a sum not to exceed one thousand five hundred dollars ($1,500) in any month.

(3) In any school district in which the average daily attendance for the prior school year was 60,000, or less, but more than 25,000, each member of the city board of education or the governing board of the district who actually attends all meetings held may receive as compensation for his or her services a sum not to exceed seven hundred fifty dollars ($750) in any month.

(4) In any school district in which the average daily attendance for the prior school year was 25,000, or less, but more than 10,000, each member of the city board of education or the governing board of the district who actually attends all meetings held may receive as compensation for his or her services a sum not to exceed four hundred dollars ($400) in any month.

(5) In any school district in which the average daily attendance for the prior school year was 10,000 or less but more than 1,000, each member of the city board of education or the governing board of the district who actually attends all meetings held may receive as compensation for his or her services a sum not to exceed two hundred forty dollars ($240) in any month.

(6) In any school district in which the average daily attendance for the prior school year was 1,000 or less but more than 150, each member of the city board of education or the governing board of the district who actually attends all meetings held may receive as compensation for his or her services a sum not to exceed one hundred twenty dollars ($120) in any month.

(7) In any school district in which the average daily attendance for the prior school year was less than 150, each member of the city board of education or the governing board of the district who actually attends all meetings held may receive as compensation for his or her services a sum not to exceed sixty dollars ($60) per month.

(8) Any member who does not attend all meetings held in any month may receive, as compensation for his or her services, an amount not greater than the maximum amount allowed by this subdivision divided by the number of meetings held and multiplied by the number of meetings actually attended.

(9) For the purposes of providing compensation pursuant to paragraphs (1) to (7), inclusive, average daily attendance for the prior school year may be increased by a school district's percentage of excused absences reported for the 1996–97 fiscal year.

(b) The compensation of members of the governing board of a school district newly organized or reorganized shall be governed by subdivision (a). For this purpose, the total average daily attendance in all of the schools of the district in the school year in which the organization or reorganization became effective pursuant to Section 4062 shall be deemed to be the average daily attendance in the district for the prior school year.

(c) A member may be paid for any meeting when absent if the board by resolution duly adopted and included in its minutes finds that at the time of the meeting he or she is performing services outside the meeting for the school district or districts, he or she was ill or on jury duty, or the absence was due to a hardship deemed acceptable by the board.

(d) The compensation shall be a charge against the funds of the school district. If the city board of education or the governing board of the district is the governing board of more than one school district, the compensation shall be charged against and paid by the respective school districts in the same proportion as the salary of the city superintendent of schools is charged against them. Compensation shall be reduced by an amount equal to any salary or compensation paid to the members of the city board of education from any funds of the city.

(e) On an annual basis, the governing board may increase the compensation of individual board members beyond the limits delineated in this section, in an amount not to exceed 5 percent based on the present monthly rate of compensation. Any increase made pursuant to this section shall be effective upon approval by the governing board.

SEC. 8. Section 35735.3 is added to the Education Code, to read:

35735.3. The transfer of seventh and eighth grade pupils between an elementary school district and a high school district triggers the recomputation, pursuant to Section 35735.1, of the base revenue limit per unit of average daily attendance of the district receiving the 7th and 8th grade pupils, except that the computations described in paragraphs (2) and (3) of subdivision (a) of Section 35735.1 shall not apply to a recomputation performed pursuant to this section.

SEC. 9. Section 38133 of the Education Code is amended to read:

38133. The management, direction, and control of school facilities under this article are vested in the governing board of the school district which shall promulgate all rules and regulations necessary to provide, at a minimum, for the following:

(a) Aid, assistance, and encouragement to any of the activities authorized in Sections 38131 and 38132.

(b) Preservation of order in school facilities and on school grounds, and protection of school facilities and school grounds, including, if the governing board deems necessary, appointment of a person who shall have charge of the school facilities and grounds for purposes of their preservation and protection.

(c) That the use of school facilities or grounds is not inconsistent with the use of the school facilities or grounds for school purposes or interferes with the regular conduct of schoolwork.

SEC. 10. Section 41023 of the Education Code is amended to read:

41023. (a) Any agency organized pursuant to Article 1 (commencing with Section 6500) of Chapter 5 of Division 7 of Title 1 of the Government Code, the parties of which consist solely of school districts and county offices of education, shall be subject to the same restrictions as are applicable to school districts and county offices of education, under that chapter, including the preparation of budget and financial statements required by Article 1 (commencing with Section

42100) and this article; the certifications required by Article 3 (commencing with Section 42130) of Chapter 6 of Part 24; the accounting and auditing requirements prescribed by Article 1 (commencing with Section 42100) and this article; and the expenditure and appropriation controls prescribed by Chapter 9 (commencing with Section 42600) of Part 24. This section does not apply to joint powers agreements that are for the performance of the powers described in Section 17567.

(b) Each agency described in subdivision (a) shall annually report to their participating school districts and county superintendents of schools on forms prescribed by the Superintendent of Public Instruction.

SEC. 11. The heading of Article 3 (commencing with Section 41030) of Chapter 1 of Part 24 of the Education Code is amended to read:

Article 3. Foundation Fund

SEC. 12. Section 41031 of the Education Code is amended to read:

41031. Any gift or bequest of money which is to be invested pursuant to this article shall be placed in a district special fund in the county treasury, to be designated as a Foundation Fund. If the gift or bequest of money is required to be used for specific purposes according to the terms of the gift or bequest, the governing board shall place the money in a separate account in the Foundation Fund, and may by resolution designate the separate account by the name that it shall be known, including in its name the term ''Foundation Account.''

SEC. 13. Section 41032 of the Education Code is amended to read:

41032. (a) The governing board of any school district may accept on behalf of, and in the name of, the district, gifts, donations, bequests, and devises that are made to the district or to or for the benefit of any school or college administered by the district. The gifts, donations, bequests, and devises may be made subject to conditions or restrictions that the governing board may prescribe.

(b) The money deposited in a separate account in the Foundation Fund shall be invested pursuant to this article or expended only for the purposes of the gift or bequest.

(c) If a gift of land has been accepted by the governing board of a school district upon condition or agreement that it be devoted to school purposes of the district, whether that condition or agreement is written or oral and whether the terms thereof are recited or referred to in any instrument executed in connection with the conveyance of the gift, and the board subsequently determines that the land cannot feasibly be utilized for any school purpose of the district, the board may cause it to be reconveyed to the donor without consideration to the district;

provided that failure to do so shall not affect the rights of any bona fide purchaser or encumbrancer of the land.

SEC. 14. Section 41033 of the Education Code is amended to read:

41033. The governing board of a school district which has placed funds in the Foundation Fund is hereby authorized to invest all or any part of those funds as it deems wise and expedient as follows:

(a) In the securities, warrants, or instruments of indebtedness specified by Section 53601 of the Government Code.

(b) In corporate securities other than corporate shares, provided that the amount of investment under this subdivision shall not exceed 50 percent of the amount invested under subdivision (a).

Any security, warrant, or instrument of indebtedness purchased pursuant to this section may be sold and the proceeds reinvested in similar securities, warrants, or instruments, or placed in the Foundation Fund.

SEC. 15. Section 41035 of the Education Code is amended to read:

41035. The governing board of a school district that invests money of the Foundation Fund pursuant to this article shall appoint an advisory committee equal in number to the number of members of the governing board. The committee shall be composed of qualified electors of the district and may include members of the governing board. Members of the committee shall serve without compensation.

SEC. 16. Section 41038 of the Education Code is amended to read:

41038. Except as may be otherwise provided in this article, other provisions of this chapter shall be applicable to the money placed in the Foundation Fund pursuant to this article.

SEC. 17. Section 41303 of the Education Code is amended to read:

41303. The Superintendent of Public Instruction shall report to the Controller, on or before the 20th day of October of each year, the total average daily attendance during the preceding fiscal year credited to all kindergarten, elementary, high school, and adult schools in the state and to county school tuition funds.

SEC. 18. Section 41372 of the Education Code is amended to read:

41372. For purposes of this section:

(a) ''Salaries of classroom teachers'' and ''teacher'' shall have the same meanings as prescribed by Section 41011 provided, however, that the cost of all health and welfare benefits provided to the teachers by the school district shall be included within the meaning of salaries of classroom teachers.

(b) ''Current expense of education'' means the gross total expended (not reduced by estimated income or estimated federal and state apportionments) for the purposes classified in the final budget of a school district (except one which, during the preceding fiscal year, had less than 101 units of average daily attendance) submitted to and

approved by the county superintendent of schools pursuant to Section 42127 for certificated salaries other than certificated salaries for pupil transportation, food services, and community services; classified salaries other than classified salaries for pupil transportation, food services, and community services; employee benefits other than employee benefits for pupil transportation personnel, food services personnel, and community services personnel; books, supplies, and equipment replacement other than for pupil transportation and food services; and community services, contracted services, and other operating expenses other than for pupil transportation, food services, and community services. ''Current expense of education,'' for purposes of this section shall not include those expenditures classified as sites, buildings, books, and media and new equipment (object of expenditure 6000 of the California School Accounting Manual), the amount expended from categorical aid received from the federal or state government which funds were granted for expenditures in a program not incurring any teacher salary expenditures or requiring disbursement of the funds without regard to the requirements of this section, or expenditures for facility acquisition and construction; and shall not include the amount expended pursuant to any lease agreement for plant and equipment or the amount expended from funds received from the federal government pursuant to the ''Economic Opportunity Act of 1964'' or any extension of this act of Congress.

There shall be expended during each fiscal year for payment of salaries of classroom teachers:

(1) By an elementary school district, 60 percent of the district's current expense of education.

(2) By a high school district, 50 percent of the district's current expense of education.

(3) By a unified school district, 55 percent of the district's current expense of education.

If the county superintendent of schools having jurisdiction over the district determines, on the basis of an audit conducted pursuant to Section 41020, that a school district has not expended the applicable percentage of current expense of education for the payment of salaries of classroom teachers during the preceding fiscal year, the county superintendent of schools shall, in apportionments made to the school district from the State School Fund after April 15 of the current fiscal year, designate an amount of this apportionment or apportionments equal to the apparent deficiency in district expenditures. Any amount designated by the county superintendent of schools shall be deposited in the county treasury to the credit of the school district, but shall be unavailable for expenditure by the district pending the determination to be made by the county superintendent of schools on any application for

exemption which may be submitted to the county superintendent of schools. If it appears to the governing board of a school district that the application of the preceding paragraphs of this section during a fiscal year results in serious hardship to the district, or in the payment of salaries of classroom teachers in excess of the salaries of classroom teachers paid by other districts of comparable type and functioning under comparable conditions, the board may apply to the county superintendent of schools in writing not later than September 15th of the succeeding fiscal year for exemption from the requirements of the preceding paragraphs of this section for the fiscal year on account of which the application is made. Upon receipt of this application, the county superintendent of schools shall grant the district exemption for any amount that is less than one thousand dollars ($1,000). If the amount is one thousand dollars ($1,000) or greater, the county superintendent of schools may grant an exemption from the requirements for the fiscal year on account of which the application is made. If the exemption is granted by the county superintendent of schools, the designated moneys shall be immediately available for expenditure by the school district governing board. If no application for exemption is made or exemption is denied, the county superintendent of schools shall order the designated amount or amount not exempted to be added to the amounts to be expended for salaries of classroom teachers during the next fiscal year.

The county superintendent of schools shall enforce the requirements prescribed by this section, and may adopt necessary rules and regulations to that end.

SEC. 19. Section 41403 of the Education Code is amended to read:

41403. The Superintendent of Public Instruction shall determine, for each current fiscal year, for each school district in the state, to two decimal points, the following:

(a) The total number of administrative employees, except those serving in positions that are supported by categorical grants from any source and are in programs that require specific teacher/administrator ratios, or that are supported by federal funds. As to those serving in positions that are not supported completely by these categorical grants from any source or completely by federal funds, the number of employees reported shall include the full-time equivalent of all fractional time attributable to that time not supported by categorical grants or federal funds.

(b) The total number of teachers except those serving in positions that are supported by federal funds or by categorical grants from any source and are in programs that require specific teacher/administrator ratios. As to those serving in positions that are not supported completely by these categorical grants from any source or completely by federal funds, the number of employees reported shall include the full-time equivalent of

all fractional time attributable to that time not supported by categorical grants or federal funds. Substitute teachers may be counted as teachers only if the employee for whom they are substituting is not counted. In no event shall the number of full-time equivalent teachers reported be greater than the number of full-time equivalent teaching positions in the district.

(c) The total maximum number of administrative employees that should be employed by the district based upon the application of the appropriate ratio prescribed by Section 41402 to the number of teachers determined pursuant to subdivision (b).

(d) The number of administrative employees in excess of the number allowable without penalty as determined by subtracting the number determined pursuant to subdivision (c) from the number determined pursuant to subdivision (a).

The number of employees reported pursuant to subdivisions (a), (b), (c), and (d) shall include the full-time equivalent of all fractional time of those employees.

For purposes of determining the allowable ratio of administrative employees to teachers for the San Diego City School District, the number of employees and the full-time equivalent of all of the fractional time of employees serving the district in positions mandated as the result of the district's court-ordered integration plan is excluded from the numbers identified pursuant to subdivisions (a), (b), (c), and (d).

No individual may be counted as more than one full-time equivalent employee unless the individual is employed on a part-time basis in adult education, driver education, or vocational education, or any part-time or additional teaching assignment, in addition to his or her regular full-time assignment.

SEC. 20. Section 41404 of the Education Code is amended to read:

41404. The Superintendent of Public Instruction shall determine the reduction in state support resulting from excess administrative employees identified in subdivision (d) of Section 41403 as follows:

(a) Compute the ratio which total state support to the district general fund bears to the total general fund income of the district.

(b) Multiply the ratio determined pursuant to subdivision (a) by the average salary of administrative employees.

(c) Multiply the product of subdivision (b) by the number of administrative employees converted to the nearest whole number in excess of the maximum number specified in Section 41402.

The amount of the second principal apportionment made to the district for the current fiscal year pursuant to Section 41335 shall be reduced by the product so produced. However, no reduction shall reduce the final apportionment below the amount specified in Section 6 of Article IX of the California Constitution.

SEC. 20.5. Section 41405 of the Education Code is repealed.

SEC. 21. Section 41407 is added to the Education Code, to read:

41407. Notwithstanding any other provision of law, a school district is subject, with regard to Section 41402, to audits conducted pursuant to Section 41020.

SEC. 22. Section 42127 of the Education Code is amended to read:

42127. (a) On or before July 1 of each year, the governing board of each school district shall accomplish the following:

(1) Hold a public hearing on the budget to be adopted for the subsequent fiscal year. The budget to be adopted shall be prepared in accordance with Section 42126. The agenda for that hearing shall be posted at least 72 hours prior to the public hearing and shall include the location where the budget will be available for public inspection.

(2) Adopt a budget. Not later than five days after that adoption or by July 1, whichever occurs first, the governing board shall file that budget with the county superintendent of schools. That budget, and supporting data, shall be maintained and made available for public review. If the governing board of the district does not want all or a portion of the property tax requirement levied for the purpose of making payments for the interest and redemption charges on indebtedness as described in paragraph (1) or (2) of subdivision (b) of Section 1 of Article XIII A of the California Constitution, the budget shall include a statement of the amount or portion for which a levy shall not be made.

(b) The county superintendent of schools may accept changes in any statement included in the budget, pursuant to subdivision (a), of the amount or portion for which a property tax levy shall not be made. The county superintendent or the county auditor shall compute the actual amounts to be levied on the property tax rolls of the district for purposes that exceed apportionments to the district pursuant to Sections 95 to 100, inclusive, of the Revenue and Taxation Code. Each school district shall provide all data needed by the county superintendent or the county auditor to compute the amounts. On or before August 15, the county superintendent shall transmit the amounts so computed to the county auditor who shall compute the tax rates necessary to produce the amounts. On or before September 1, the county auditor shall submit the rate so computed to the board of supervisors for adoption.

(c) The county superintendent of schools shall do all of the following:

(1) Examine the adopted budget to determine whether it complies with the standards and criteria adopted by the State Board of Education pursuant to Section 33127 for application to final local educational agency budgets. The superintendent shall identify, if necessary, any technical corrections that must be made to bring the budget into compliance with those standards and criteria.

(2) Determine whether the adopted budget will allow the district to meet its financial obligations during the fiscal year and is consistent with a financial plan that will enable the district to satisfy its multiyear financial commitments.

(d) On or before August 15, the county superintendent of schools shall approve or disapprove the adopted budget for each school district. If, pursuant to the review conducted pursuant to subdivision (c), the superintendent determines that the adopted budget for a school district does not satisfy paragraph (1) or (2) of that subdivision, he or she shall disapprove the budget and, not later than August 15, transmit to the governing board of the school district, in writing, his or her recommendations regarding revision of the budget and the reasons for those recommendations. The county superintendent of schools may assign a fiscal adviser to assist the district to develop a budget in compliance with those revisions. In addition, the county superintendent of schools may appoint a committee to examine and comment on the superintendent's review and recommendations, subject to the requirement that the committee report its findings to the superintendent no later than August 20.

(e) On or before September 8, the governing board of the school district shall revise the adopted budget to reflect changes in projected income or expenditures subsequent to July 1, and to include any response to the recommendations of the county superintendent of schools, shall adopt the revised budget, and shall file the revised budget with the county superintendent of schools. Prior to revising the budget, the governing board shall hold a public hearing regarding the proposed revisions, to be conducted in accordance with Section 42103. The revised budget, and supporting data, shall be maintained and made available for public review.

(f) On or before September 22, the county superintendent of schools shall provide a list to the Superintendent of Public Instruction identifying all school districts for which budgets may be disapproved.

(g) The county superintendent of schools shall examine the revised budget to determine whether it (1) complies with the standards and criteria adopted by the State Board of Education pursuant to Section 33127 for application to final local educational agency budgets, (2) allows the district to meet its financial obligations during the fiscal year, and (3) is consistent with a financial plan that will enable the district to satisfy its multiyear financial commitments, and, not later than October 8, shall approve or disapprove the revised budget. If the county superintendent of schools disapproves the budget, he or she shall call for the formation of a budget review committee pursuant to Section 42127.1 unless the governing board of the school district and the county superintendent of schools agree to waive the requirement that a budget

review committee be formed, and the State Department of Education approves the waiver after determining that a budget review committee is not necessary. Based on the waiver, the county superintendent immediately has the authority and responsibility provided in Section 42127.3.

(h) Not later than October 8, the county superintendent of schools shall submit a report to the Superintendent of Public Instruction identifying all school districts for which budgets have been disapproved or budget review committees waived. The report shall include a copy of the written response transmitted to each of those districts pursuant to subdivision (d).

(i) Notwithstanding any other provision of this section, the budget review for a school district shall be governed by paragraphs (1), (2), and (3) of this subdivision, rather than by subdivisions (e) and (g), if the governing board of the school district so elects, and notifies the county superintendent in writing of that decision, not later than October 31 of the immediately preceding calendar year. On or before July 1, the governing board of a school district for which the budget review is governed by this subdivision, rather than by subdivisions (e) and (g), shall conduct a public hearing regarding its proposed budget in accordance with Section 42103.

(1) If the adopted budget of a school district is disapproved pursuant to subdivision (d), on or before September 8, the governing board of the school district, in conjunction with the county superintendent of schools, shall review the superintendent's recommendations at a regular meeting of the governing board and respond to those recommendations. The response shall include any revisions to the adopted budget and other proposed actions to be taken, if any, as a result of those recommendations.

(2) On or before September 22, the county superintendent of schools will provide a list to the Superintendent of Public Instruction identifying all school districts for which a budget may be tentatively disapproved.

(3) Not later than October 8, after receiving the response required under paragraph (1), the county superintendent of schools shall review that response and either approve or disapprove the budget. If the county superintendent of schools disapproves the budget, he or she shall call for the formation of a budget review committee pursuant to Section 42127.1 unless the governing board of the school district and the county superintendent of schools agree to waive the requirement that a budget review committee be formed, and the State Department of Education approves the waiver after determining that a budget review committee is not necessary. Based on the waiver, the county superintendent immediately has the authority and responsibility provided in Section 42127.3.

(4) Not later than 45 days after the Governor signs the annual Budget Act, the school district shall make available for public review any revisions in revenues and expenditures that it has made to its budget to reflect the funding made available by that Budget Act.

(j) Any school district for which the county board of education serves as the governing board is not subject to subdivisions (c) to (h), inclusive, but is governed instead by the budget procedures set forth in Section 1622.

SEC. 23. Section 42127.1 of the Education Code is amended to read:

42127.1. (a) Pursuant to subdivision (g) or (i) of Section 42127, upon the disapproval of a school district budget by the county superintendent, the county superintendent shall call for the formation of a budget review committee unless the governing board of the school district and the county superintendent of schools agree to waive the requirement that a budget review committee be formed, and the State Department of Education approves the waiver after determining that a budget review committee is not necessary. Based on the waiver, the county superintendent immediately has the authority and responsibility provided in Section 42127.3.

(b) The budget review committee shall be composed of three persons selected by the governing board of the school district from a list of candidates provided to the governing board by the Superintendent of Public Instruction. The list of candidates shall be composed of persons who have expertise in the management of a school district or county office of education. Their experience shall include, but not be limited to, the fiscal and educational aspects of local educational agency management.

(c) Notwithstanding subdivision (b) or any other provision of this article, with the approval of the Superintendent of Public Instruction and the governing board of the school district, the county superintendent of schools may select and convene a regional review committee, consisting of persons having the expertise described in that subdivision. The regional review committee shall operate in place of the budget review committee, in accordance with the provisions of this article governing budget review committees.

(d) Members of the committee shall be reimbursed by the State Department of Education for their services and associated expenses while on official business at rates established by the State Board of Education.

SEC. 24. Section 42129 of the Education Code is amended to read:

42129. School districts and county offices of education shall transmit to the State Department of Education, on a timely basis, all budget reports, prior year expenditure reports, qualified and negative

financial status reports, program cost accounting reports, certifications, and audit reports as prescribed by subdivision (j) of Section 1240, subdivision (g) of Section 35035, Sections 1621, 1623, 41020, 42127, 42131, and Chapter 7.2 (commencing with Section 56836) of Part 30, and those reports used to calculate the first, second, and annual principal apportionments and special purpose apportionments for school districts and county offices of education. If the reports are not submitted to the Superintendent of Public Instruction within 14 days after the submission date prescribed in the statute or specified by the Superintendent of Public Instruction, the Superintendent of Public Instruction may direct the county auditor to withhold payment of any stipend, expenses, or salaries to the district superintendent, county superintendent, or members of the governing boards, as appropriate. The withholding shall continue only until the delinquent reports have been submitted to the State Department of Education. If the county superintendent performs the functions of the county auditor, the Superintendent of Public Instruction may direct the county superintendent to withhold the payments specified in this section.

SEC. 25. 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 paragraph (1) of subdivision (a) of Section 54203.

(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. Commencing in the 2002–03 fiscal year, only positions supported from a non-General Fund revenue source determined to be properly excludable as identified for a particular local education agency or pursuant to a blanket waiver by the Superintendent of Public Instruction and the Director of Finance, prior to the 2002–03 fiscal year, may be excluded pursuant to this paragraph.

(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) The calculations set forth in paragraphs (1), (2), and (3), inclusive, of subdivision (a) exclude employer contributions for employees of charter schools funded pursuant to Article 2 (commencing with Section 47633) of Chapter 6 of Part 26.8.

(c) Funding appropriated through the Budget Act of 2001 or legislation amending the Budget Act of 2001 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 shall be allocated on a one-time basis 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).

(d) Thirty-five million dollars ($35,000,000) is hereby appropriated from the General Fund for transfer to Section A of the State School Fund for local assistance for the purpose of limiting the reductions to revenue limits calculated pursuant to this section and to Section 2558 for the 2003–04 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 appropriated in this subdivision that is proportionate to the reduction in their apportionment pursuant to this section or to Section 2558 for the 2003–04 fiscal year as compared to the statewide total reduction that would occur absent this paragraph.

(2) For the 2003–04 fiscal year, in lieu of the alternative calculation authorized by paragraph (1), the 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 2003–04 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) for the 2003–04 fiscal year.

(4) For the purposes of making the computations required by Section 8 of Article XVI of the California Constitution, the appropriation made by this section shall be deemed to be ''General Fund revenues appropriated for school districts,'' as defined in subdivision (c) of Section 41202 of the Education Code, for the 2003–04 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 2003–04 fiscal year.

(e) For the 2004–05 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 2004–05 fiscal year as compared to the statewide total reduction as would occur absent this paragraph.

(2) 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 (c) 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 (c) 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. 26. Section 42238.146 of the Education Code is amended and renumbered to read:

14002.3. 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.

(b) This section shall become inoperative on July 1, 2004, and, as of January 1, 2005, is repealed, unless a later enacted statute, that is enacted before January 1, 2005, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 27. Section 42241.7 of the Education Code is amended to read:

42241.7. (a) For the 1978–79 fiscal year, and each fiscal year thereafter, the revenue limit of any elementary, high, or unified school district authorized pursuant to Sections 42237 and 42238 may be increased by an amount sufficient to provide additional revenue equal to the expenditures estimated to be incurred by the district in the budget year in complying with the following provisions of the Unemployment Insurance Code: Sections 605 and 803, Article 6 (commencing with Section 821) of Chapter 3 of Part 1 of Division 1, or Article 3 (commencing with Section 976) of Chapter 4 of Part 1 of Division 1, less the actual expenditures incurred by the district in the 1975–76 fiscal year in complying with the following provisions of the Unemployment

Insurance Code: Section 605.2 and Article 6 (commencing with Section 821) of Chapter 3 of Part 1 of Division 1.

(b) If, at the end of any fiscal year, the actual expenditures of the district specified in subdivision (a) are less than the revenue derived from the increase in revenue limit provided in subdivision (a) for that fiscal year, the difference shall be used in the following fiscal year exclusively for expenditures required pursuant to the Unemployment Insurance Code provisions specified in subdivision (a).

(c) If, at the end of any fiscal year, the actual expenditures of the district specified in subdivision (a) exceed the revenue derived from the increase in revenue limit provided in subdivision (a) for that fiscal year, the difference may be added to the increase in revenue limit, authorized pursuant to this section, in the following fiscal year.

(d) Commencing with the 1994–95 fiscal year and each fiscal year thereafter, the adjustment computed pursuant to this section shall not be adjusted by the deficit factor applied to the revenue limit of each school district pursuant to Section 42238.145.

(e) Expenditures for employees of charter schools funded pursuant to Article 2 (commencing with Section 47633) of Chapter 6 of Part 26.8 are excluded from the calculations set forth in this section.

SEC. 28. Section 42850 of the Education Code is amended to read:

42850. The governing board of any school district may establish a fund for pension and other employee benefits 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. 29. Section 44049 of the Education Code is amended to read:

44049. (a) Except as provided in subdivision (c), any principal or person designated by the principal who, in his or her professional capacity or within the scope of his or her employment, has knowledge of or observes a pupil whom he or she knows, or reasonably suspects as evidenced by the pupil's apparent intoxication, has consumed an alcoholic beverage or abused a controlled substance, as listed in Chapter 2 (commencing with Section 11053) of the Health and Safety Code, may report the known or suspected instance of alcohol or controlled substance abuse to the parent or parents, or other person having legal custody, of the student.

(b) No principal or his or her designee who reports a known or suspected instance of alcohol or controlled substance abuse by a pupil

to the parent or parents, or other person having legal custody, of the pupil shall be civilly or criminally liable, for any report or as a result of any report, unless it can be proven that a false report was made and the principal or his or her designee knew that the report was false or was made with reckless disregard for the truth or falsity of the report. Any principal or his or her designee who makes a report known to be false or with reckless disregard of the truth or falsity of the report is liable for any damages caused.

(c) No principal or person designated by the principal shall report a known or suspected instance of alcohol or controlled substance abuse by a pupil to the parent or parents, or other person having legal custody, of the pupil if the report would require the disclosure of confidential information in violation of Section 49602 or 72621.

SEC. 30. Section 46200 of the Education Code is amended to read:

46200. (a) In the 1984–85 fiscal year, for each school district that certifies to the Superintendent of Public Instruction that it offers 180 days or more of instruction per school year, the Superintendent of Public Instruction shall apportion thirty-five dollars ($35) per unit of average daily attendance, exclusive of adult average daily attendance, the average daily attendance of pupils while participating in regional occupation centers or programs, and average daily attendance for pupils attending summer school. A multitrack year-round school shall be deemed to be in compliance with the 180-day requirement if it certifies to the Superintendent of Public Instruction that it is a multitrack year-round school and maintains its school for a minimum of 163 schooldays. Each school district that received an apportionment pursuant to this subdivision in the 1984–85 fiscal year shall add thirty-five dollars ($35) to the district's base revenue limit per unit of average daily attendance for the 1985–86 fiscal year.

(b) For any school district that received an apportionment pursuant to subdivision (a) and that offered less than 180 days, or offered less than the number of days required in subdivision (a) for multitrack year-round schools, of instruction in the 1985–86 fiscal year to the 2000–01 fiscal year, inclusive, and that does not provide the minimum number of instructional minutes specified in subdivision (a) of Section 46201 for that fiscal year, the Superintendent of Public Instruction shall reduce the base revenue limit per unit of average daily attendance for that fiscal year or years by an amount attributable to the increase received pursuant to subdivision (a), as adjusted in fiscal years subsequent to the 1984–85 fiscal year.

(c) For any school district that received an apportionment pursuant to subdivision (a) and that offers less than 180 days of instruction or, in multitrack year-round schools, fewer than the number of days required in subdivision (a) for multitrack year-round schools, in the 2001–02

fiscal year, or any fiscal year thereafter, the Superintendent of Public Instruction shall withhold from the district's revenue limit apportionment for the average daily attendance of each affected grade level the sum of 0.0056 multiplied by that apportionment, for each day less than 180, or, in multitrack year-round schools, for each day less than the number of days required in subdivision (a) for year-round schools that the district offered.

(d) For any school district that received an apportionment pursuant to subdivision (a) and that offered less than 180 days of instruction as required in subdivision (a) in the 1985–86 fiscal year, to either the end of the final year of the teacher bargaining unit contract in force in that district on January 1, 2002, inclusive, or, if no teacher bargaining unit contract was in force in that district on January 1, 2002, to the end of the 2001–02 fiscal year, inclusive, and that provided the minimum number of instructional minutes in subdivision (a) of Section 46201 during all of the period applicable to the district pursuant to this subdivision, subdivision (c) shall not apply until the first fiscal year following the end of the applicable period of years.

SEC. 31. Section 46200.5 of the Education Code is amended to read:

46200.5. (a) In the 1985–86 fiscal year, for each county office of education that certifies to the Superintendent of Public Instruction that it offers 180 days or more of instruction per school year of special day classes pursuant to Section 56364 or Section 56364.2, as applicable, the Superintendent of Public Instruction shall determine an amount equal to seventy dollars ($70) per unit of current year second principal apportionment average daily attendance for special day classes. This computation shall be included in computations made by the superintendent pursuant to Chapter 7.2 (commencing with Section 56836) of Part 30.

(b) For any county office of education that received an apportionment pursuant to subdivision (a) and that offered less than 180 days of instruction in the 1986–87 fiscal year, to the 2000–01 fiscal year, inclusive, and that does not provide the minimum number of instructional minutes specified in subdivision (a) of Section 46201 for that fiscal year, the Superintendent of Public Instruction shall reduce the special education apportionment per unit of average daily attendance for that fiscal year by an amount attributable to the increase received pursuant to subdivision (a), as adjusted in fiscal years subsequent to the 1985–86 fiscal year.

(c) For any county office of education that receives an apportionment pursuant to subdivision (a) and that offers less than 180 days of instruction or in multitrack year-round schools a minimum of 163 days, in the 2001–02 fiscal year, or any fiscal year thereafter, the

Superintendent of Public Instruction shall withhold from the county office of education's revenue limit apportionment for the average daily attendance of each affected grade level the sum of 0.0056 multiplied by that apportionment, for each day less than 180 or, in multitrack year-round schools, for each day less than 163, that the county office of education offered.

(d) For any county office of education that received an apportionment pursuant to subdivision (a) and that offered less than 180 days of instruction as required in subdivision (a) in the 1986–87 fiscal year, to either the end of the final year of the teacher bargaining unit contract in force in that county office on January 1, 2002, inclusive, or, if no teacher bargaining unit contract was in force in that county office on January 1, 2002, to the end of the 2001–02 fiscal year, inclusive, and that provided the minimum number of instructional minutes in subdivision (a) of Section 46201.5 during all of the period applicable to the county office pursuant to this subdivision, subdivision (c) does not apply until the first fiscal year following the end of the applicable period of years.

SEC. 32. Section 46202 of the Education Code is amended to read:

46202. (a) Except as otherwise provided in this section, in fiscal year 2000–01 and prior, if the governing board of a school district offers less instructional time than the amount of instructional time fixed for the 1982–83 fiscal year, the Superintendent of Public Instruction shall, in that fiscal year, reduce that district's apportionment by the average percentage increase in the base revenue limit for districts of similar type and size multiplied by the district's units of average daily attendance.

(b) Except as otherwise provided in this section, in fiscal year 2001–02 and any fiscal year thereafter, if the governing board of a school district offers less instructional time than the amount of instructional time fixed for the 1982–83 fiscal year, the Superintendent of Public Instruction shall withhold for that fiscal year, from the district's revenue limit apportionment for the average daily attendance of each affected grade level, the sum of that apportionment multiplied by the percentage of instructional minutes fixed in the 1982–83 school year, at that grade level, that the district failed to offer.

(c) The Glendora Unified School District shall reinstate the sixth period, which shall be equivalent to at least 50 minutes of instruction, effective the start of the second semester of the 1983–84 fiscal year.

SEC. 33. Section 49553 of the Education Code, as amended by Chapter 825 of the Statutes of 1997, is repealed.

SEC. 34. Section 49553 of the Education Code, as amended by Chapter 1078 of the Statutes of 1998, is amended to read:

49553. (a) A nutritionally adequate meal, for the purposes of this article, is a breakfast or lunch as defined in Section 49531 that qualifies for reimbursement under the federal child nutrition program regulations.

(b) (1) (A) For the purposes of special school nutrition supplements provided to pregnant or lactating pupils under Section 49559, protein and grain meal components for any given day shall, together, offer a total of five ounces of protein, one ounce of which shall be cheese or eight ounces of milk and three servings from the grain group, preferably whole and nutritious grains. This may be accomplished by adding one ounce of protein and one serving from the grain group at breakfast or serving these as a snack, and by adding one or two ounces of protein, one ounce of which shall be cheese or eight ounces of milk, to lunch, or by offering a morning supplement consisting of two or three ounces of protein, one ounce of which must be cheese, or eight ounces of milk, and one or two servings from the grain group.

(B) Meal components where only breakfast is served shall be increased to a total including one ounce of protein and two servings from the grain group, preferably whole and nutritious grains.

(C) Where both breakfast and lunch are provided, they shall, together, provide a total of five ounces of protein foods, one ounce of which shall be cheese, three servings from the grain group, preferably whole and nutritious grains, one and one-fourth cups from the fruit and vegetable group, and one pint from the milk group.

(2) The following options shall be allowed:

(A) One cup of fruit in place of one serving of the grain group, once a week.

(B) One cup of yogurt, made with pasteurized milk, in place of eight ounces of milk or one ounce of cheese, up to two times per week.

SEC. 35. 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 shall do one 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 an entity that has proven, successful expertise specific to the challenges inherent in low-performing schools. These entities may include, but are not limited to, the following:

(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 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 at a regularly scheduled public meeting. 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 affected 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. 36. Section 52055.610 of the Education Code is amended to read:

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 dollar ($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 May 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 June 15, 2002. The State Board of Education shall approve or disapprove the

application and action plan by June 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 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 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 August 1, 2002, and the Superintendent of Public Instruction shall make a recommendation to the State Board of Education regarding approval or disapproval by September 1, 2002. The State Board of Education shall approve or disapprove the application and action plan by September 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 September 30, 2002, the recommendation of the Superintendent of Public Instruction shall be deemed to be adopted and funding for implementation of the action plan is to be allocated.

(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.

(d) If a school receives implementation funding during the same fiscal year it receives a fifty thousand dollar ($50,000) planning grant, the planning grant shall be deducted from the amount of implementation funding provided to the school pursuant to subdivision (b) of Section 52055.600.

SEC. 37. Section 52055.640 of the Education Code is amended to read:

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 progress made towards achieving English language proficiency as measured by 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 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 be 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.

SEC. 38. Section 52055.656 of the Education Code, as added by Section 11 of Chapter 42 of the Statutes of 2002, is amended to read:

52055.656. (a) Each school district with schools participating in 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, 2003, 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 June 30, 2003, the Superintendent of Public Instruction shall contract with an independent evaluator to prepare a multiyear comprehensive evaluation of the implementation, impact, costs, and benefits of the High Priority Schools Grant Program for Low Performing Schools. The preliminary results of the multiyear evaluation shall be disseminated to the Legislature, the Governor and interested parties no later than June 30, 2004. An interim report shall be disseminated to the Legislature, the Governor, and interested parties no later than June 30, 2005. The final comprehensive evaluation shall be disseminated to the Legislature, the Governor, and interested parties no

later than June 30, 2006. 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 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.

SEC. 39. Section 52291 of the Education Code is amended to read:

52291. (a) 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 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 the 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.

SEC. 40. Section 52310.5 of the Education Code is amended to read:

52310.5. (a) Each regional occupational program or center shall be maintained by, and subject to the authority and control of, its governing board.

(b) The governing board of a regional occupational program or center maintained by a single school district is the governing board of the school district.

(c) The governing board of a regional occupational program or center maintained by a county superintendent of schools is the county board of education.

(d) The governing board of a regional occupational program or center established by two or more school districts pursuant to Article 1 (commencing with Section 6500) of Chapter 5 of Division 7 of Title 1 of the Government Code, shall consist of at least one member of the governing board of each of the school districts cooperating in the regional occupational program or center, the member to be selected by the governing board of the district represented by that member.

(e) Any other cooperative agreement established after 1965 to establish a regional occupational program or center pursuant to Section 52301 shall have a governing board which shall consist of at least one member of the governing board of each of the school districts cooperating in the regional occupational program or center. Each member is to be selected by the governing board of the district represented by that member.

(f) The governing board of a regional occupational center maintained by either a single school district or a county is not entitled to an additional stipend merely to carry out governance of the operations of the regional occupational center or program.

SEC. 41. Section 52314 of the Education Code is amended to read:

52314. (a) Except as provided in subdivision (b), any pupil eligible to attend a high school or adult school in a school district subject to the jurisdiction of a county superintendent of schools operating a regional occupational center or regional occupational program, and who resides in a school district which by itself or in cooperation with other school districts, has not established a regional occupational center, or regional occupational program, is eligible to attend a regional occupational center or regional occupational program maintained by the county superintendent of schools. Any school district which in cooperation with other school districts maintains a regional occupational center, or regional occupational program, or any cooperating school districts may admit to the center, or program, any pupil, otherwise eligible, who resides in the district or in any of the cooperating districts. Any school district which by itself maintains a regional occupational center, or regional occupational program, may admit to the center, or program, any pupil, otherwise eligible, who resides in the district. No pupil, including adults under Section 52610 shall be admitted to a regional occupational center, or regional occupational program, unless the county superintendent of schools or governing board of the district or districts maintaining the center, or program, as the case may be, determines that the pupil will benefit therefrom and approves of his or her admission to the regional occupational center or regional occupational program.

A pupil may be admitted on a full-time or part-time basis, as determined by the county superintendent of schools or governing board of the school district or districts maintaining the center, or program, as the case may be.

(b) No pupil shall be eligible to be admitted to a regional occupational center or program, nor may his or her attendance be credited to a regional occupational center or program, until he or she has attained the age of 16 years, unless the pupil meets one or more of the following conditions:

(1) The pupil is enrolled in grade 11 or a higher grade.

(2) The pupil received a referral and all of the following conditions are met:

(A) The pupil is referred to a regional occupational center or program by a school counselor, school administrator, or classroom teacher. The referral shall include a written statement of the reasons why the pupil's educational needs cannot be met without the pupil being enrolled in a regional occupational center or program.

Pupils under 16 years of age eligible for enrollment in regional occupational centers and programs under this paragraph include, but are not necessarily limited to, pupils for whom there is a high probability that they will leave school prior to graduation.

(B) The referral is reviewed and approved by the principal or designated administrator of the school in which the pupil is enrolled.

(C) The referral is reviewed and approved by the director or designated administrator of the regional occupational center or program to which the pupil has been referred.

(D) The pupil is enrolled in a high school, which, for purposes of this requirement, means a school that maintains any of grades 9 to 12, inclusive.

(3) The pupil's individualized education program adopted pursuant to the requirements of Chapter 2 (commencing with Section 56300) of Part 30 prescribes occupational training for which his or her enrollment in a regional occupational center or program is deemed appropriate.

(c) Each school district, county superintendent of schools, or joint powers agency which maintains a regional occupational center or regional occupational program shall submit to the State Department of Education, at the time and in the manner prescribed by the Superintendent of Public Instruction, the enrollment and average daily attendance for each grade level and the enrollment and average daily attendance for each exemption set forth in subdivision (b).

The State Department of Education shall submit this information to the Legislature and to the Director of Finance by April 1 of each year for the preceding school year.

SEC. 42. Section 54743 of the Education Code is amended to read:

54743. For the purposes of this chapter, the following definitions shall apply:

(a) ''Case management'' means a process that ensures that the pupil and child receive identified needed services in an efficient, supportive, and cost effective manner. The process is interactive, pupil-centered, culturally appropriate, and goal-oriented.

(b) ''Child care and development program'' means developmentally appropriate learning activities for the children of enrolled teen parents that are provided when the child's teen parent is, or parents are, participating in a school-approved activity both during and outside the schoolday.

(c) ''Intake process'' means the interactive process upon entry into the Cal-SAFE program through which academic and service needs are inventoried and demographic data are collected.

(d) ''Interventions'' means services needed to correct or ameliorate a pupil's health, psychosocial, educational, vocational, daily living, or economic problems, which may impede the pupil from achieving the program goals.

(e) ''Local education agency'' means a school district or county office of education.

(f) ''Support services'' means services, as referenced in subdivision (b) of Section 54746, that will enhance the academic ability of the enrolled pupil in order for her or him to earn a high school diploma or its equivalent and for healthy development of their children.

(g) ''Title IX of the Education Amendments of 1972 Regulations'' refers to federal Public Law 92-318 and the regulations set forth in Section 106.1 and following of Title 34 of the Code of Federal Regulations, which prohibit discrimination against pupils, among other things, because of their pregnant or parenting status.

(h) ''Expectant parent'' means a female who is pregnant or a male who voluntarily identifies himself as the parent of an unborn child, and who meets eligibility criteria specified in Section 54747.

SEC. 43. Section 54745 of the Education Code is amended to read:

54745. (a) In the administration of the Cal-SAFE program, the following provisions shall apply:

(1) Participation by a school district or county superintendent of schools in the Cal-SAFE program is voluntary.

(2) The governing board of a school district or county superintendent of schools may submit an application to the State Department of Education in the manner, form, and date specified by the department to establish and maintain a Cal-SAFE program.

(3) A school district or county superintendent of schools approved to implement the Cal-SAFE program shall be funded as one program to be operated at one or multiple sites depending upon the need within the service area.

(4) Notwithstanding any other provision of law, a school district or county superintendent of schools operating, by October 1, 1999, a School Age Parent and Infant Development Program pursuant to Article 17 (commencing with Section 8390) of Chapter 2 of Part 6, a Pregnant Minors Program pursuant to Chapter 6 (commencing with Section 8900) of Part 6 and Section 2551.3, or a Pregnant and Lactating Students Program pursuant to Sections 49553 and 49559, as those provisions existed prior to the operative date of the act that adds this article, or any combination thereof, that chooses to participate in the Cal-SAFE program shall have priority for Cal-SAFE program funding for an amount up to the dollar amount provided to each school district or county superintendent of schools under those provisions in the fiscal year prior to participation in the Cal-SAFE program, provided that an application is submitted and approved.

(5) If a school district or county superintendent of schools operating a School Age Parent and Infant Development Program, a Pregnant Minors Program, or a Pregnant and Lactating Students Program, or any combination thereof, chooses not to participate in the Cal-SAFE program, it is the intent of the Legislature that the funding it would have

received for the operation of those programs shall be redirected to the Cal-SAFE program and the school district or county superintendent of schools may apply in a subsequent school year to operate a Cal-SAFE program.

(6) A school district or county superintendent of schools that terminates its Cal-SAFE program may reapply to establish a Cal-SAFE program.

(7) In order to continue implementation of the Cal-SAFE program beyond the initial three years of funding, each funded agency shall be reviewed by the department to determine progress towards achieving the goals set forth in Section 54742. Thereafter, funded agencies shall be reviewed and reauthorized every five years based upon a process determined by the department to continue implementation of a Cal-SAFE program.

(b) All of the following requirements shall apply to an application for the Cal-SAFE program:

(1) The governing board of a participating local education agency shall adopt a policy or resolution declaring its commitment to provide a comprehensive, continuous, community-linked program for expectant and parenting pupils and their children that reflects the cultural and linguistic diversity of the community.

(2) The local education agency shall provide assurance for participation in the development of the County Service Coordination Plan as described in Section 54744.

(3) A school district or county superintendent of schools shall agree to participate in the data collection and evaluation of the Cal-SAFE program.

(c) To implement a Cal-SAFE program, the funded school district, or county superintendent of schools shall meet all of the following criteria:

(1) Be in compliance with Title IX of the Education Amendments of 1972 Regulations.

(2) Ensure that enrolled pupils retain their right to participate in any comprehensive school or educational alternative programs in which they could otherwise enroll. School placement and instructional strategies shall be based upon the needs and styles of learning of the individual pupils. The classroom setting shall be the preferred instructional strategy unless an alternative is necessary to meet the needs of the individual parent, child, or both.

(3) Enroll pupils into the Cal-SAFE program on an open entry and open exit basis.

(4) Provide a quality education program to pupils in a supportive and accommodating learning environment with appropriate classroom strategies to ensure school access and academic credit for all work completed.

(5) Provide parenting education and life skills instruction to enrolled pupils.

(6) Make maximum utilization of available programs and facilities to serve expectant and parenting pupils and their children.

(7) Provide a quality child care and development program for the children of enrolled teen parents located on or near the schoolsite.

(8) Make maximum utilization of its local school food service program.

(9) Provide special school nutrition supplements, as defined by subdivision (b) of Section 49553, to pregnant and lactating pupils.

(10) Enter into formal partnership agreements, as necessary, with community-based organizations and other governmental agencies to assist pupils in accessing support services.

(11) Provide staff development and community outreach in order to establish a positive learning environment and school policies supportive of expectant and parenting pupils' academic achievement and to promote the healthy development of their children.

(12) Maintain an annual program budget and expenditure report to document that funds are expended pursuant to Section 54749.

(13) Assess no fees to enrolled pupils or their families for services provided through the Cal-SAFE program.

(14) Establish and maintain a database in the manner and form prescribed by the State Department of Education for purposes of program evaluation.

(15) Coordinate to the maximum extent possible with Cal-Learn program case managers provided pursuant to Section 11332.5 of the Welfare and Institutions Code and Adolescent Family Life Program case managers provided pursuant to Article 1 (commencing with Section 124175) of Chapter 4 of Part 2 of Division 106 of the Health and Safety Code.

SEC. 44. 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 instruction.

(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 expectant 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) In-service 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. 45. Section 54747 of the Education Code is amended to read:

54747. (a) A male or female pupil, 18 years of age or younger, may enroll in the Cal-SAFE program and be eligible for all services afforded to pupils enrolled if he or she is an expectant parent, the custodial parent, or the noncustodial parent taking an active role in the care and supervision of the child, and has not earned a high school diploma or its equivalent.

(b) A pupil who is an expectant parent, custodial parent, or noncustodial parent taking an active role in the care and supervision of his or her child, has not earned a high school diploma or its equivalent,

and has an active special education Individualized Education Plan (IEP) shall be eligible as long as she or he has an active IEP and meets the eligibility criteria as specified in paragraph (4) of subdivision (c) of Section 56026, and shall continue to receive services identified in the IEP while enrolled in the Cal-SAFE program.

(c) Pupils shall be eligible for enrollment on a voluntary basis for as long as they meet eligibility criteria specified in subdivisions (a) and (b) until they earn a high school diploma or its equivalent.

(d) A pupil may not be denied initial or continuous enrollment in the Cal-SAFE program for any of the following reasons:

(1) The pupil has had multiple pregnancies.

(2) The pupil has more than one child.

(3) The pupil's eligibility status changed from expectant to parenting.

(e) If an enrolled 18-year-old pupil reaches age 19 without earning a high school diploma or its equivalent, the pupil may be enrolled for one additional semester if the pupil has been continuously enrolled in the Cal-SAFE program since before his or her 19th birthday.

(f) Pupils receiving services under Article 3.5 (commencing with Section 11331) of Chapter 2 of Part 3 of Division 9 of the Welfare and Institutions Code are eligible for services under this chapter. Child care provided under this article shall be the primary source of child care for these recipients when participating in a Cal-SAFE program operated by school districts or county superintendents of schools.

SEC. 46. Section 56001 of the Education Code is amended to read:

56001. It is the intent of the Legislature that special education programs provide all of the following:

(a) Each individual with exceptional needs is assured an education appropriate to his or her needs in publicly supported programs through completion of his or her prescribed course of study or until the time that he or she has met proficiency standards prescribed.

(b) By June 30, 1991, early educational opportunities shall be available to all children between the ages of three and five years who require special education and services.

(c) Early educational opportunities shall be made available to children younger than three years of age pursuant to Chapter 4.4 (commencing with Section 56425), appropriate sections of this part, and the California Early Intervention Service Act, Title 14 (commencing with Section 95000) of the Government Code.

(d) Any child younger than three years, potentially eligible for special education, shall be afforded the protections provided pursuant to the California Early Intervention Services Act, Title 14 (commencing with Section 95000) of the Government Code and Section 1439 of Title 20 of the United States Code and implementing regulations.

(e) Each individual with exceptional needs shall have his or her educational goals, objectives, and special education and related services specified in a written individualized education program.

(f) Education programs are provided under an approved local plan for special education that sets forth the elements of the programs in accordance with this part. This plan for special education shall be developed cooperatively with input from the community advisory committee and appropriate representation from special and regular teachers and administrators selected by the groups they represent to ensure effective participation and communication.

(g) Individuals with exceptional needs are offered special assistance programs that promote maximum interaction with the general school population in a manner that is appropriate to the needs of both, taking into consideration, for hard-of-hearing or deaf children, the individual's needs for a sufficient number of age and language mode peers and for special education teachers who are proficient in the individual's primary language mode.

(h) Pupils are transferred out of special education programs when special education services are no longer needed.

(i) The unnecessary use of labels is avoided in providing special education and related services for individuals with exceptional needs.

(j) Procedures and materials for assessment and placement of individuals with exceptional needs shall be selected and administered so as not to be racially, culturally, or sexually discriminatory. No single assessment instrument shall be the sole criterion for determining placement of a pupil. The procedures and materials for assessment and placement shall be in the individual's mode of communication. Procedures and materials for use with pupils of limited English proficiency, as defined in subdivision (m) of Section 52163, shall be in the individual's primary language. All assessment materials and procedures shall be selected and administered pursuant to Section 56320.

(k) Educational programs are coordinated with other public and private agencies, including preschools, child development programs, nonpublic nonsectarian schools, regional occupational centers and programs, and postsecondary and adult programs for individuals with exceptional needs.

(*l*) Psychological and health services for individuals with exceptional needs shall be available to each schoolsite.

(m) Continuous evaluation of the effectiveness of these special education programs by the school district, special education local plan area, or county office shall be made to ensure the highest quality educational offerings.

(n) Appropriate qualified staff are employed, consistent with credentialing requirements, to fulfill the responsibilities of the local plan and positive efforts are made to employ qualified disabled individuals.

(o) Regular and special education personnel are adequately prepared to provide educational instruction and services to individuals with exceptional needs.

SEC. 47. Section 56100 of the Education Code is amended to read:

56100. The State Board of Education shall do all of the following:

(a) Adopt rules and regulations necessary for the efficient administration of this part.

(b) Adopt criteria and procedures for the review and approval by the board of local plans.

(c) Adopt size and scope standards for determining the efficacy of local plans submitted by special education local plan areas, pursuant to subdivision (a) of Section 56195.1.

(d) Provide review, upon petition, to any district, special education local plan area, or county office that appeals a decision made by the department that affects its providing services under this part except a decision made pursuant to Chapter 5 (commencing with Section 56500).

(e) Review and approve a program evaluation plan for special education programs provided by this part in accordance with Chapter 6 (commencing with Section 56600). This plan may be approved for up to three years.

(f) Recommend to the Commission on Teacher Credentialing the adoption of standards for the certification of professional personnel for special education programs conducted pursuant to this part.

(g) Adopt regulations to provide specific procedural criteria and guidelines for the identification of pupils as individuals with exceptional needs.

(h) Adopt guidelines of reasonable pupil progress and achievement for individuals with exceptional needs. The guidelines shall be developed to aid teachers and parents or guardians in assessing an individual pupil's education program and the appropriateness of the special education services.

(i) In accordance with the requirements of federal law, adopt regulations for all educational programs for individuals with exceptional needs, including programs administered by other state or local agencies.

(j) Adopt uniform rules and regulations relating to parental due process rights in the area of special education.

(k) Adopt rules and regulations regarding the ownership and transfer of materials and equipment, including facilities, related to transfer of programs, reorganization, or restructuring of special education local plan areas.

SEC. 48. Section 56129 of the Education Code is amended to read:

56129. The superintendent shall maintain the state special schools and diagnostic centers in accordance with Part 32 (commencing with Section 59000) so that the services of those schools and centers are coordinated with the services of the district, special education local plan area, or the county office.

SEC. 49. Section 56130 of the Education Code is amended to read:

56130. The superintendent shall develop in accordance with Section 56602, a biennial performance report of special education programs authorized under this part for submission to the board.

SEC. 50. 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 state and federal funds in support of special education programs, 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 special education local plan area under the direction of the special education local plan area governance body. The special education local plan area governance body may designate a local educational agency board, a county office board, or the responsible local agency board to hold the hearing. 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. 51. Section 56205 of the Education Code is amended to read:

56205. (a) Each special education local plan area submitting a local plan to the superintendent under this part shall assure, in conformity with subsection (a) of Section 1412 of, and paragraph (1) of subsection (a) of Section 1413 of, Title 20 of the United States Code, that it has in effect policies, procedures, and programs that are consistent with state laws, regulations, and policies governing the following:

(1) Free appropriate public education.

(2) Full educational opportunity.

(3) Child find and referral.

(4) Individualized education programs, including development, implementation, review, and revision.

(5) Least restrictive environment.

(6) Procedural safeguards.

(7) Annual and triennial assessments.

(8) Confidentiality.

(9) Transition from Subchapter III (commencing with Section 1431) of Title 20 of the United States Code to the preschool program.

(10) Children in private schools.

(11) Compliance assurances, including general compliance with the Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.), Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. Sec. 794), the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12101 et seq.), federal regulations relating thereto, and this part.

(12) (A) A description of the governance and administration of the plan, including identification of the governing body of a multidistrict plan or the individual responsible for administration in a single district plan, and of the elected officials to whom the governing body or individual is responsible.

(B) A description of the regionalized operations and services listed in Section 56836.23 and the direct instructional support provided by program specialists in accordance with Section 56368 to be provided through the plan.

(C) Verification that a community advisory committee has been established pursuant to Section 56190.

(D) Multidistrict plans, submitted pursuant to subdivision (b) or (c) of Section 56195.1, shall do the following:

(i) 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.

(ii) Identify the respective roles of the administrative unit and the administrator of the special education local plan area and the individual local education agencies within the special education local plan area in relation to the following:

(I) The hiring, supervision, evaluation, and discipline of the administrator of the special education local plan area and staff employed by the administrative unit in support of the local plan.

(II) The allocation from the state of federal and state funds to the special education local plan area administrative unit or to local education agencies within the special education local plan area.

(III) The operation of special education programs.

(IV) Monitoring the appropriate use of federal, state, and local funds allocated for special education programs.

(V) The preparation of program and fiscal reports required of the special education local plan area by the state.

(iii) Include 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) The description of the governance and administration of the plan, and the policymaking process, shall be consistent with subdivision (f) of Section 56001, subdivision (a) of Section 56195.3, and Section 56195.9, and shall reflect a schedule of regular consultations regarding policy and budget development with representatives of special education and regular education teachers and administrators selected by the groups they represent and parent members of the community advisory committee established pursuant to Article 7 (commencing with Section 56190) of Chapter 2.

(13) Comprehensive system of personnel development.

(14) Personnel standards, including standards for training and supervision of paraprofessionals.

(15) Performance goals and indicators.

(16) Participation in state and districtwide assessments, and reports relating to assessments.

(17) Supplementation of state, local, and other federal funds, including nonsupplantation of funds.

(18) Maintenance of financial effort.

(19) Opportunities for public participation prior to adoption of policies and procedures.

(20) Suspension and expulsion rates.

(b) Each local plan submitted to the superintendent under this part shall also contain all the following:

(1) An annual budget plan that shall be adopted at a public hearing held by the special education local plan area. Notice of this hearing shall be posted in each school in the local plan area at least 15 days prior to the hearing. The annual budget plan may be revised during any fiscal year according to the policymaking process established pursuant to subparagraph (D) and (E) of paragraph (12) of subdivision (a) and consistent with subdivision (f) of Section 56001 and Section 56195.9. The annual budget plan shall identify expected expenditures for all items required by this part which shall include, but not be limited to, the following:

(A) Funds received in accordance with Chapter 7.2 (commencing with Section 56836).

(B) Administrative costs of the plan.

(C) Special education services to pupils with severe disabilities and low incidence disabilities.

(D) Special education services to pupils with nonsevere disabilities.

(E) Supplemental aids and services to meet the individual needs of pupils placed in regular education classrooms and environments.

(F) Regionalized operations and services, and direct instructional support by program specialists in accordance with Article 6 (commencing with Section 56836.23) of Chapter 7.2.

(G) The use of property taxes allocated to the special education local plan area pursuant to Section 2572.

(2) An annual service plan shall be adopted at a public hearing held by the special education local plan area. Notice of this hearing shall be posted in each school district in the special education local plan area at least 15 days prior to the hearing. The annual service plan may be revised during any fiscal year according to the policymaking process established pursuant to subparagraphs (D) and (E) of paragraph (12) of subdivision (a) and consistent with subdivision (f) of Section 56001 and with Section 56195.9. The annual service plan shall include a description of services to be provided by each district and county office, including the nature of the services and the physical location at which the services will be provided, including alternative schools, charter schools, opportunity schools and classes, community day schools operated by school districts, community schools operated by county offices of education, and juvenile court schools, regardless of whether the district or county office of education is participating in the local plan. This description shall demonstrate that all individuals with exceptional needs shall have access to services and instruction appropriate to meet their needs as specified in their individualized education programs.

(3) A description of programs for early childhood special education from birth through five years of age.

(4) A description of the method by which members of the public, including parents or guardians of individuals with exceptional needs who are receiving services under the plan, may address questions or concerns to the governing body or individual identified in subparagraph (A) of paragraph (12) of subdivision (a).

(5) A description of a dispute resolution process, including mediation and final and binding arbitration to resolve disputes over the distribution of funding, the responsibility for service provision, and the other governance activities specified within the plan.

(6) 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.

(7) A description of the process being utilized to meet the requirements of Section 56303.

(c) A description of the process being utilized to oversee and evaluate placements in nonpublic, nonsectarian schools and the method of ensuring that all requirements of each pupil's individualized education program are being met. The description shall include a method for evaluating whether the pupil is making appropriate educational progress.

(d) The local plan, budget plan, and annual service plan shall be written in language that is understandable to the general public.

SEC. 52. Section 56345 of the Education Code is amended to read:

56345. (a) The individualized education program is a written statement determined in a meeting of the individualized education program team and shall include, but not be limited to, all of the following:

(1) The present levels of the pupil's educational performance, including the following:

(A) For a schoolage child, how the pupil's disability affects the pupil's involvement and progress in the general curriculum.

(B) For a preschoolage child, as appropriate, how the disability affects the child's participation in appropriate activities.

(2) The measurable annual goals, including benchmarks or short-term objectives related to the following:

(A) Meeting the pupil's needs that result from the pupil's disability to enable the pupil to be involved in and progress in the general curriculum.

(B) Meeting each of the pupil's other educational needs that result from the pupil's disability.

(3) The specific special educational instruction and related services and supplementary aids and services to be provided to the pupil, or on behalf of the pupil, and a statement of the program modifications or supports for school personnel that will be provided for the pupil in order to do the following:

(A) To advance appropriately toward attaining the annual goals.

(B) To be involved and progress in the general curriculum in accordance with subparagraph (A) of paragraph (1) and to participate in extracurricular and other nonacademic activities.

(C) To be educated and participate with other pupils with disabilities and nondisabled pupils in the activities described in this section.

(4) An explanation of the extent, if any, to which the pupil will not participate with nondisabled pupils in regular classes and in the activities described in paragraph (3).

(5) The individual modifications in the administration of state or districtwide assessments of pupil achievement that are needed in order for the pupil to participate in the assessment. If the individualized education program team determines that the pupil will not participate in a particular state or districtwide assessment of pupil achievement (or part of an assessment), a statement of the following:

(A) Why that assessment is not appropriate for the pupil.

(B) How the pupil will be assessed.

(6) The projected date for the beginning of the services and modifications described in paragraph (3), and the anticipated frequency, location, and duration of those services and modifications included in the individualized education program.

(7) Appropriate objective criteria, evaluation procedures, and schedules for determining, on at least an annual basis, whether the annual goals are being achieved.

(8) Beginning at least one year before the pupil reaches the age of 18, a statement shall be included in the individualized education program that the pupil has been informed of his or her rights under this part, if any, that will transfer to the pupil upon reaching the age of 18 pursuant to Section 56041.5.

(9) A statement of how the pupil's progress toward the annual goals described in paragraph (2) will be measured.

(10) A statement of how the pupil's parents or guardians will be regularly informed, at least as often as parents or guardians are informed of their nondisabled pupil's progress in the following:

(A) The pupil's progress toward the annual goals described in paragraph (2).

(B) The extent to which that progress is sufficient to enable the pupil to achieve the goals by the end of the year.

(b) When appropriate, the individualized education program shall also include, but not be limited to, all of the following:

(1) For pupils in grades 7 to 12, inclusive, any alternative means and modes necessary for the pupil to complete the district's prescribed course of study and to meet or exceed proficiency standards for graduation.

(2) For individuals whose primary language is other than English, linguistically appropriate goals, objectives, programs and services.

(3) Extended school year services when needed, as determined by the individualized education program team.

(4) Provision for the transition into the regular class program if the pupil is to be transferred from a special class or nonpublic, nonsectarian school into a regular class in a public school for any part of the schoolday, including the following:

(A) A description of activities provided to integrate the pupil into the regular education program. The description shall indicate the nature of each activity, and the time spent on the activity each day or week.

(B) A description of the activities provided to support the transition of pupils from the special education program into the regular education program.

(5) For pupils with low-incidence disabilities, specialized services, materials, and equipment, consistent with guidelines established pursuant to Section 56136.

(c) It is the intent of the Legislature in requiring individualized education programs that the district, special education local plan area, or county office is responsible for providing the services delineated in the individualized education program. However, the Legislature

recognizes that some pupils may not meet or exceed the growth projected in the annual goals and objectives of the pupil's individualized education program.

(d) Consistent with Section 56000.5 and clause (iv) of subparagraph (B) of paragraph (3) of subsection (d) of Section 1414 of Title 20 of the United States Code, it is the intent of the Legislature that, in making a determination of what constitutes an appropriate education to meet the unique needs of a deaf or hard-of-hearing pupil in the least restrictive environment, the individualized education program team shall consider the related services and program options that provide the pupil with an equal opportunity for communication access. The individualized education program team shall specifically discuss the communication needs of the pupil, consistent with the guidelines adopted pursuant to Section 56136 and Page 49274 of Volume 57 of the Federal Register, including all of the following:

(1) The pupil's primary language mode and language, which may include the use of spoken language with or without visual cues, or the use of sign language, or a combination of both.

(2) The availability of a sufficient number of age, cognitive, and language peers of similar abilities which may be met by consolidating services into a local plan areawide program or providing placement pursuant to Section 56361.

(3) Appropriate, direct, and ongoing language access to special education teachers and other specialists who are proficient in the pupil's primary language mode and language consistent with existing law regarding teacher training requirements.

(4) Services necessary to ensure communication-accessible academic instructions, school services, and extracurricular activities consistent with the Vocational Rehabilitation Act of 1973 as set forth in Section 794 of Title 29 of the United States Code and the Americans with Disabilities Act of 1990 as set forth in Section 12000, and following, of Title 42 of the United States Code.

(e) No General Fund money made available to school districts or local agencies may be used for any additional responsibilities and services associated with paragraphs (1) and (2) of subdivision (e), including the training of special education teachers and other specialists, even if those additional responsibilities or services are required pursuant to a judicial or state agency determination. Those responsibilities and services shall only be funded by a local educational agency as follows:

(1) The costs of those activities shall be funded from existing programs and funding sources.

(2) Those activities shall be supported by the resources otherwise made available to those programs.

(3) Those activities shall be consistent with the provisions of Sections 56240 to 56243, inclusive.

(f) It is the intent of the Legislature that the communication skills of teachers who work with hard-of-hearing and deaf children be improved; however, nothing in this section shall be construed to remove the local educational agency's discretionary authority in regard to in-service activities.

SEC. 53. Section 56361 of the Education Code is amended to read:

56361. The continuum of program options shall include, but not necessarily be limited to, all of the following or any combination of the following:

(a) Regular education programs consistent with subparagraph (A) of paragraph (5) of subsection (a) of Section 1412 of Title 20 of the United States Code and implementing regulations.

(b) A resource specialist program pursuant to Section 56362.

(c) Designated instruction and services pursuant to Section 56363.

(d) Special classes pursuant to Section 56364 or Section 56364.2, as applicable.

(e) Nonpublic, nonsectarian school services pursuant to Section 56365.

(f) State special schools pursuant to Section 56367.

(g) Instruction in settings other than classrooms where specially designed instruction may occur.

(h) Itinerant instruction in classrooms, resource rooms, and settings other than classrooms where specially designed instruction may occur to the extent required by federal law or regulation.

(i) Instruction using telecommunication, and instruction in the home, in hospitals, and in other institutions to the extent required by federal law or regulation.

SEC. 54. Section 56392 of the Education Code is amended to read:

56392. It is not the intent of the Legislature by enacting this chapter to eliminate the opportunity for an individual with exceptional needs to earn a standard diploma issued by a local or state educational agency when the pupil has completed the prescribed course of study and has passed the proficiency requirements with or without differential standards.

SEC. 55. Section 56393 of the Education Code is repealed.

SEC. 56. Section 56441.1 of the Education Code is amended to read:

56441.1. (a) Services rendered by state and local agencies serving preschool children with exceptional needs and their families shall be provided in coordination with other state and local agencies. Educational agencies offering similar educational services shall coordinate and not

duplicate these services. The Superintendent of Public Instruction shall identify similar services by other state and local agencies.

(b) As the preschool child approaches the age to enter an elementary school environment, the child's preparation shall be geared toward a readiness for kindergarten and later school success.

SEC. 57. Section 56473 of the Education Code is amended to read:

56473. Project workability shall be funded pursuant to Item 6100-161-0001 and Item 6100-161-0890 of Section 2.00 of the annual Budget Act.

SEC. 58. Section 56836.155 of the Education Code is amended to read:

56836.155. (a) On or before November 2, 1998, the department, in conjunction with the Office of the Legislative Analyst, shall do the following:

(1) Calculate an ''incidence multiplier'' for each special education local plan area using the definition, methodology, and data provided in the final report submitted by the American Institutes for Research pursuant to Section 67 of Chapter 854 of the Statutes of 1997.

(2) Submit the incidence multiplier for each special education local plan area and supporting data to the Department of Finance.

(b) The Department of Finance shall review the incidence multiplier for each special education local plan area and the supporting data, and report any errors to the department and the Office of the Legislative Analyst for correction.

(c) The Department of Finance shall approve the final incidence multiplier for each special education local plan area by November 23, 1998.

(d) For the 1998–99 fiscal year and each fiscal year thereafter to and including the 2002–03 fiscal year, the superintendent shall perform the following calculation to determine each special education local plan area's adjusted entitlement for the incidence of disabilities:

(1) The incidence multiplier for the special education local plan area shall be multiplied by the statewide target amount per unit of average daily attendance for special education local plan areas determined pursuant to Section 56836.11 for the fiscal year in which the computation is made.

(2) The amount determined pursuant to paragraph (1) shall be added to the statewide target amount per unit of average daily attendance for special education local plan area determined pursuant to Section 56836.11 for the fiscal year in which the computation is made.

(3) Subtract the amount of funding for the special education local plan area determined pursuant to paragraph (1) of subdivision (a) or paragraph (1) of subdivision (b) of Section 56836.08, as appropriate for the fiscal year in which the computation is made, or the statewide target

amount per unit of average daily attendance for special education local plan areas determined pursuant to Section 56836.11 for the fiscal year in which the computation is made, whichever is greater, from the amount determined pursuant to paragraph (2). For the purposes of this paragraph for the 2001–02 and 2002–03 fiscal years, the amount, if any, received pursuant to Section 56836.159 shall be excluded from the funding level per unit of average daily attendance for a special education local plan area. If the result is less than zero, than the special education local plan area shall not receive an adjusted entitlement for the incidence of disabilities.

(4) Multiply the amount determined in paragraph (3) by either the average daily attendance reported for the special education local plan area for the fiscal year in which the computation is made, as adjusted pursuant to subdivision (a) of Section 56836.15, or the average daily attendance reported for the special education local plan area for the prior fiscal year, as adjusted pursuant to subdivision (a) of Section 56826.15, whichever is less.

(5) If there are insufficient funds appropriated in the fiscal year for which the computation is made for the purposes of this section, the amount received by each special education local plan area shall be prorated.

(e) For the 1997–98 fiscal year, the superintendent shall perform the calculation in paragraphs (1) to (3), inclusive, of paragraph (d) only for the purposes of making the computation in paragraph (1) of subdivision (d) of Section 56836.08, but the special education local plan area shall not receive an adjusted entitlement for the incidence of disabilities pursuant to this section for the 1997–98 fiscal year.

(f) On or before March 1, 2003, the Office of the Legislative Analyst, in conjunction with the Department of Finance and the department, shall submit to the Legislature a new study of the incidence multiplier, with recommendations as to the necessity of continuing to adjust the funding formula contained in this chapter for the purposes of this section to the extent that funding is provided for this purpose. The Office of the Legislative Analyst may contract for this study. It is the intent of the Legislature to provide funding for this study in the Budget Act of 2002.

SEC. 59. Section 56836.23 of the Education Code is amended to read:

56836.23. Funds for regionalized operations and services and the direct instructional support of program specialists shall be apportioned to the special education local plan areas. As a condition to receiving those funds, the special education local plan area shall ensure that all functions listed below are performed in accordance with the description set forth in its local plan adopted pursuant to Section 56205:

(a) Coordination of the special education local plan area and the implementation of the local plan.

(b) Coordinated system of identification and assessment.

(c) Coordinated system of procedural safeguards.

(d) Coordinated system of staff development and parent and guardian education.

(e) Coordinated system of curriculum development and alignment with the core curriculum.

(f) Coordinated system of internal program review, evaluation of the effectiveness of the local plan, and implementation of a local plan accountability mechanism.

(g) Coordinated system of data collection and management.

(h) Coordination of interagency agreements.

(i) Coordination of services to medical facilities.

(j) Coordination of services to licensed children's institutions and foster family homes.

(k) Preparation and transmission of required special education local plan area reports.

(*l*) Fiscal and logistical support of the community advisory committee.

(m) Coordination of transportation services for individuals with exceptional needs.

(n) Coordination of career and vocational education and transition services.

(o) Assurance of full educational opportunity.

(p) Fiscal administration and the allocation of state and federal funds pursuant to Section 56836.01.

(q) Direct instructional program support that may be provided by program specialists in accordance with Section 56368.

SEC. 60. Section 59201 of the Education Code is amended to read:

59201. The diagnostic centers are a part of the public school system of the state, except that they derive no revenue from the State School Fund. The diagnostic centers provide services, including pupil assessment, consultation, technical assistance, and training, to school districts, county offices of education, and special education local plan areas.

SEC. 61. Section 59203 of the Education Code is amended to read:

59203. The Superintendent of Public Instruction, in relation to the diagnostic centers, shall do all of the following:

(a) Prescribe rules for the government of the centers.

(b) Appoint the directors of the centers and other officers and employees.

(c) Remove for cause any officer, teacher, or employee.

SEC. 62. Section 59204 of the Education Code is repealed.

SEC. 63. Section 59204.5 of the Education Code is amended to read:

59204.5. The Superintendent of Public Instruction, in connection with the diagnostic centers and in cooperation with public and private agencies, may:

(a) Conduct projects designed to meet needs of those categories of disabled children selected by the Superintendent of Public Instruction.

(b) Serve as a demonstration program to promote personnel development through in-service education, internships, and professional observations for education personnel, in cooperation with institutions of higher education and local education agencies.

SEC. 64. Section 59210 of the Education Code is amended to read:

59210. The powers and duties of the directors of the diagnostic centers are such as are assigned by the Superintendent of Public Instruction.

SEC. 65. Section 59211 of the Education Code is repealed.

SEC. 66. Section 59220 of the Education Code is repealed.

SEC. 67. Section 59220 is added to the Education Code, to read:

59220. Pupils residing within California shall be accepted by a diagnostic center pursuant to criteria adopted by the Superintendent of Public Instruction.

SEC. 68. Section 59223 of the Education Code is repealed.

SEC. 69. Section 60451 of the Education Code is amended to read:

60451. Each school district shall expend funds received pursuant to this chapter for the sole purpose of purchasing instructional materials in the core curriculum that are aligned to content standards for pupils in kindergarten and grades 1 to 12, inclusive, that meet all of the following requirements:

(a) The instructional materials are aligned with content standards adopted by the State Board of Education in 1997 or 1998.

(b) The instructional materials for pupils in kindergarten and grades 1 to 8, inclusive, have been adopted by the State Board of Education pursuant to Chapter 2 (commencing with Section 60200) of Part 33, using criteria aligned to the adopted content standards.

(c) The instructional materials for pupils in grades 9 to 12, inclusive, are basic instructional materials, as defined in subdivision (a) of Section 60010, that have been reviewed and approved, through a resolution adopted by the local governing board, as being aligned with the content standards adopted by the State Board of Education in 1997 or 1998.

(d) Prior to purchase, publishers shall be required to submit grade level content standards maps to local districts so that the districts can determine the extent to which instructional materials or combination of instructional materials for pupils in grades 9 to 12, inclusive, are aligned to the content standards adopted by the State Board of Education. The

standards maps shall be filled out and distributed free of charge by the publisher using standards maps developed by the State Department of Education and approved by the State Board of Education by July 1, 2003.

SEC. 70. 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, except that history-social science shall not be included in the grade 9 assessment unless the State Board of Education adopts academic content standards for a grade 9 history-social science course, 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. 71. Section 60453 of the Education Code is amended to read:

60453. Because funds appropriated in the 2001–02 fiscal year for purposes of this chapter remain available for expenditure through the 2002–03 fiscal year pursuant to subdivision (f) of Section 60450.1, this chapter shall become inoperative on June 30, 2003, and as of January 1, 2004, is repealed, unless a later enacted statute, which is enacted before January 1, 2004, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 72. 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, or a school district for which the county board of education serves as the governing board, 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. 73. The heading of Chapter 26.5 (commencing with Section 7570) of the Government Code is amended to read:

CHAPTER 26.5. INTERAGENCY RESPONSIBILITIES FOR PROVIDING SERVICES TO CHILDREN WITH DISABILITIES

SEC. 74. Section 12.40 of Chapter 106 of the Statutes of 2001 is amended to read:

Sec. 12.40. (a) Notwithstanding any other provision of law, not more than 20 percent of the amount apportioned to any school district, county office of education, or other educational agency under the programs funded in this act that were funded in Item 6110-230-0001 of Section 2.00 of SB 160 of the 1999–2000 Regular Session, as introduced on January 8, 1999, may be expended by that recipient for the purposes of any other program for which the recipient is eligible for funding under those items, except that the total amount of funding allocated to the recipient under this item that is expended by the recipient for the purposes of any of those programs shall not exceed 125 percent of the amount of state funding allocated pursuant to the appropriations to that recipient for those programs in this act for the 2001–02 fiscal year. Notwithstanding any other provision of law, for the 2001–02 fiscal year, local education agencies may also use this authority to provide the funds necessary to initiate a conflict resolution program pursuant to Chapter 2.5 (commencing with Section 32260) of Part 19 of the Education Code, and to continue to support following the three-to-five year state grant period, or to expand, a Healthy Start program pursuant to Chapter 5 (commencing with Section 8800) of Part 6 of the Education Code.

(b) The education programs that are eligible for the flexibility provided in subdivision (a) include the following items: Items 6110-108-0001, 6110-111-0001, 6110-132-0001, 6110-116-0001, 6110-119-0001, 6110-120-0001, 6110-122-0001, 6110-124-0001, 6110-126-0001, 6110-127-0001, 6110-128-0001, 6110-131-0001, 6110-146-0001, 6110-151-0001, 6110-163-0001, 6110-167-0001, 6110-180-0001, 6110-181-0001, 6110-193-0001, 6110-197-0001, 6110-203-0001, 6110-224-0001, and 6110-209-0001, of this act.

(c) As a condition of receiving the funds provided for the programs identified in subdivision (b), local education agencies shall report to the State Department of Education by October 15, 2002, on any amounts

shifted between these programs pursuant to the flexibility provided in subdivision (a).

SEC. 75. Section 62 of Chapter 78 of the Statutes of 1999, as amended by Chapter 76 of the Statutes of 2000, is amended to read:

Sec. 62. Notwithstanding any other provision of law, for the purposes of Sections 14002, 14004, and 41301 of the Education Code for the 2000–01 fiscal year, 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 of the Education Code, and the revenue limits of county superintendents of schools as determined pursuant to Section 2558 of the Education Code, and the revenue limit portion of charter school operational funding as determined pursuant to Section 47633 of the Education Code.

SEC. 76. The Legislature finds and declares that this act furthers the purposes of the Classroom Instructional Improvement and Accountability Act.

SEC. 77. 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. 78. 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 educational 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.

CHAPTER 1169

An act to amend Section 87482.7 of, and to repeal and add Article 4 (commencing with Section 87100) of Chapter 1 of Part 51 of, the Education Code, relating to community colleges.

[Approved by Governor September 30, 2002. Filed with Secretary of State September 30, 2002.]

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

SECTION 1. Article 4 (commencing with Section 87100) of Chapter 1 of Part 51 of the Education Code is repealed.

SEC. 2. Article 4 (commencing with Section 87100) is added to Chapter 1 of Part 51 of the Education Code, to read:

Article 4. Equal Employment Opportunity Hiring

87100. The Legislature finds and declares all of the following:

(a) In fulfilling its mission within California's system of public higher education, the California Community Colleges are committed to academic excellence and to providing all students with the opportunity to succeed in their chosen educational pursuits.

(b) Academic excellence can best be sustained in a climate of acceptance and with the inclusion of persons from a wide variety of backgrounds and preparations to provide service to an increasingly diverse student population.

(c) A workforce that is continually responsive to the needs of a diverse student population may be achieved by ensuring that all persons receive an equal opportunity to compete for employment and promotion within the community college districts and by eliminating barriers to equal employment opportunity.

(d) It is the intent of the Legislature to establish and maintain, within the California Community College districts, a policy of equal opportunity in employment for all persons, and to prohibit discrimination or preferential treatment based on ethnic group identification, race, color, national origin, religion, age, gender, disability, ancestry, or sexual orientation. Every aspect of personnel policy and practice in the community college districts should advance the realization of inclusion through a continuing program of equal employment opportunity.

(e) The Legislature recognizes that it is not enough to proclaim that community college districts must not discriminate and must not grant preferential treatment on impermissible bases. The Legislature declares that efforts must also be made to build a community in which nondiscrimination and equal opportunity are realized. It is the intent of the Legislature to require community college districts to adopt and implement programs and plans for ensuring equal employment opportunity in their employment practices.

87101. For the purposes of this article:

(a) ''Equal employment opportunity'' means that all qualified individuals have a full and fair opportunity to compete for hiring and promotion and fully enjoy the benefits of employment by a community

college district. Ensuring equal employment opportunity is advanced in an inclusive environment that fosters cooperation, acceptance, democracy, and the free expression of ideas. An inclusive environment is welcoming to men and women, persons with disabilities, individuals from all ethnic groups, and individuals from all other groups protected from discrimination by this article.

(b) ''Equal employment opportunity plan'' means a document that includes specific procedures for achieving equal employment opportunity.

(c) ''Equal employment opportunity program'' means all the various methods by which equal employment opportunity is ensured. These methods include, but are not necessarily limited to, actively recruiting, using nondiscriminatory employment practices, and monitoring employment practices to ensure equality of opportunity. Each district employer shall commit to sustained action to devise recruiting, training, and advancement opportunities that will result in equal employment opportunities for all qualified applicants and employees.

87102. (a) As a condition for the receipt of funds pursuant to Section 87107, the governing board of community college district that opts to participate under the article shall periodically submit to the board of governors an affirmation of compliance with this article. Each participating district's equal employment opportunity program shall ensure participation in, and commitment to, the program by district personnel. Each participating district's equal employment opportunity plan shall include steps that the district will take in eliminating improper discrimination or preferences in its hiring and employment practices. Each plan shall address how the district will make progress in achieving the ratio of full-time to part-time faculty hiring, as indicated in Section 87482.6, while still ensuring equal employment opportunity.

(b) Each participating district's equal employment opportunity plan is a public record within the meaning of the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code).

87103. The board of governors shall render assistance in developing and implementing equal employment opportunity programs in the community college districts.

87105. The board of governors shall adopt all necessary regulations to carry out the intent of this article and to ensure that each participating community college district implements processes for ensuring equal employment opportunities. Nothing in this act shall be construed to require any community college to incur any costs in excess of the funds allocated by the state for the purposes of this act.

87106. (a) The board of governors shall develop systemwide strategies for encouraging community college students to become

qualified for, and seek, employment as community college faculty or administrators.

(b) The board of governors shall develop and disseminate to community college districts a model equal employment opportunity plan that accomplishes at least all of the following:

(1) Compliance with the regulations adopted by the board of governors to implement this article.

(2) Compliance with the other applicable state and federal nondiscrimination statutes.

(3) Implementation of the best practices for improving the equality of opportunity.

(4) Encouragement of districts to take steps reasonably calculated to inform their students about the opportunity to participate in the Graduate Assumption Program of Loans for Education authorized by Article 5.5 (commencing with Section 69618) of Chapter 2 of Part 42 and to participate in other programs developed by the board of governors pursuant to subdivision (a).

87107. In order to support the activities required and authorized by this article, the Employment Opportunity Fund is hereby established. The fund shall include moneys appropriated in the annual Budget Act or provided, pursuant to Section 87482.7, through transfer. The moneys in the fund shall be administered by the board of governors for the purpose of promoting equal employment opportunities in hiring and promotion at community college districts.

87108. (a) The board of governors shall adopt regulations for the use of the fund. Those uses may include, but need not be limited to, all of the following:

(1) Activities designed to encourage community college students to become qualified for, and seek, employment as community college faculty or administrators.

(2) Outreach and recruitment.

(3) In-service training on equal employment opportunities.

(4) Accommodations for applicants and employees with disabilities.

(5) Activities to promote equal employment opportunities and implement the requirements of this article.

(b) The Board of Governors of the California Community Colleges may use not more than 25 percent of the revenues in the fund to provide technical assistance, service, monitoring, and compliance functions. Service functions under this subdivision may include, but are not necessarily limited to, the provision of a clearinghouse for advertising community college district job opportunities and for allowing persons seeking jobs to make known their interest in community college employment. This clearinghouse shall include a special emphasis on faculty internship employment opportunities and on reaching students

who are qualified for faculty internship programs. The remaining balance in the fund may be allocated to the individual community college districts as prescribed by the board of governors.

SEC. 3. Section 87482.7 of the Education Code is amended to read:

87482.7. (a) The board of governors shall, pursuant to paragraph (6) of subdivision (b) of Section 70901, adopt regulations that establish minimum standards regarding the percentage of hours of credit instruction that shall be taught by full-time instructors.

(b) Upon notification by the board of governors, the Department of Finance shall transfer any money deducted from district apportionments pursuant to the regulations adopted under this section. This money shall be transferred to the Employment Opportunity Fund pursuant to Section 87107.

CHAPTER 1170

An act to amend and supplement the Budget Act of 2002, relating to state government, and declaring the urgency thereof, to take effect immediately.

[Became law without Governor's signature. Filed with Secretary of State October 8, 2002.]

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

SECTION 1. Section 3.90 is added to the Budget Act of 2002, to read:

Sec. 3.90. Notwithstanding any other provision of law, appropriations for state operations may be reduced by up to 5 percent of the amount of expenditure authority appropriated in the Budget Act of 2002 to reflect a total reduction of up to $750,000,000.

(a) The Director of Finance shall allocate the necessary reductions required by this section. The allocation of reductions shall be based on plans submitted by the agency secretaries, and if no agency secretary exists, the appropriate authority shall submit the plan.

(b) All reductions allocated by the Director of Finance pursuant to subdivision (a) shall be specific reductions in positions or items of expenditure. The plan shall categorize each reduction as to whether it eliminates resources in excess of those needed to carry out programs effectively or whether the reduction will have a programmatic effect, in which case the plan shall identify that effect.

(c) The reductions allocated by the Director of Finance shall be reflected and identified in the 2003–04 Governor's Budget as submitted

to the Legislature. At the time that the 2003–04 Governor's Budget is submitted to the Legislature, the Department of Finance shall (1) submit proposed statutory changes necessary to achieve the reductions, and (2) provide a report to the Joint Legislative Budget Committee and the budget committee in each house identifying the reductions allocated to each department. For each reduction, the report shall identify the program or programs affected, how and when the reduction will be accomplished, and the effect of each reduction on program functions or services.

SEC. 2. Section 3.91 is added to the Budget Act of 2002, to read as follows:

Sec. 3.91. As it would be in the best interest of the state to encourage the early retirement of state employees, the Governor is hereby directed within 30 days to issue an Executive order in accordance with Section 20901 of the Government Code and Section 22715 of the Education Code to provide state employees from designated units that meet the required conditions an additional two years of service credit.

SEC. 3. (a) Not later than June 30, 2004, the Director of Finance shall abolish at least 1,000 positions in state government, including positions in departments, agencies, boards, commissions, state universities, and other employment authorities of the state. The positions shall be identified in the proposed State Budget for the 2003–04 fiscal year.

(b) The Director of Finance shall determine which positions shall be abolished in accordance with the following criteria:

(1) The director may not abolish positions that directly provide 24-hour care, public safety, and critical services to the state.

(2) The director shall give priority to the elimination of positions that are vacant through attrition in order to minimize layoffs.

(3) The director shall give priority to the elimination of administrative and managerial positions that do not provide direct services to the public.

(c) The director shall notify in writing the Chairperson of the Joint Legislative Budget Committee and the chairperson of the committee in each house that considers appropriations not later than 90 days prior to the effective date of an action to abolish any position.

(d) On or before July 31, 2004, the Director of Finance shall, in consultation with the Director of Personnel Administration, submit a report to the Joint Legislative Budget Committee and the Joint Legislative Audit Committee that sets forth all positions that were abolished pursuant to this section.

SEC. 4. The total expenditure authorizations from the General Fund for the 2003–04 fiscal year shall be limited to the total revenues to the General Fund for the 2003–04 fiscal year.

SEC. 5. This act shall not take effect unless both of the following bills are chaptered before this bill is chaptered:

(a) The Budget Act of 2002 as proposed by Assembly Bill 425, as amended on June 29, 2002.

(b) Senate Bill 1849 of the 2001–02 Legislative Session.

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:

This act contains provisions for strategic planning and performance measurement concerning state government expenditures that are imperative to bring state spending within available resources to ensure the health and welfare of the citizens of the state. It is therefore necessary that this act go into immediate effect.

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CONCURRENT AND JOINT RESOLUTIONS AND CONSTITUTIONAL AMENDMENTS

2001–02

REGULAR SESSION

2002 RESOLUTION CHAPTERS

RESOLUTION CHAPTER 1

Assembly Concurrent Resolution No. 128—Relative to Dr. Martin Luther King, Jr. Day.

[Filed with Secretary of State January 28, 2002.]

WHEREAS, Monday, January 21, 2002, marks the 16th National Celebration of the National Holiday for Dr. Martin Luther King, Jr. and his fight for civil and human rights; and

WHEREAS, On Monday, January 21, 2002, Dr. Martin Luther King, Jr. would have been 72 years of age; and

WHEREAS, On April 10, 1970, California became the first state to pass legislation making Dr. King's birthday a school holiday and, subsequently, a statewide holiday; and

WHEREAS, Representative John Conyers (D-Michigan) submitted the first legislation for a National King Holiday, which was signed into law by President Ronald Wilson Reagan, on November 2, 1983; and

WHEREAS, January 20, 1986, marked the first observance of Dr. Martin Luther King, Jr. Day; and

WHEREAS, Dr. King and the Civil Rights Movement helped change public policy from segregation to integration, resulting in the repeal of the post-Reconstruction era state laws mandating racial segregation in the South known as the ''Black Codes,'' in the passage of laws aimed at ending economic and social segregation in the North, and in the passage of the Civil Rights Act of 1964, the Voting Rights Act of 1965, and other antidiscrimination, full citizen participation laws; and

WHEREAS, Dr. King and the Civil Rights Movement specifically changed public policy from closed access to open access in education, including higher education, employment and labor laws, transportation policy, election laws, and other aspects of public policy, particularly those relating to human rights; and

WHEREAS, These public policy changes at the national level influenced many changes in California public policy as manifested in the Unruh Civil Rights Act and the Rumford Fair Housing Act, in open enrollment and access to higher education, specifically with respect to the California State University and the University of California, and in employment and labor laws, transportation policy, election laws, and other aspects of public policy; and

WHEREAS, The unfinished business of Dr. King and the Civil Rights Movement was and is the plight of the poor, the fight against war and for worldwide peace, and the struggle for a fair, equitable, and sensible economic system; and

WHEREAS, Dr. King and the Civil Rights Movement noted that a majority of Americans lived below the poverty line, and that the huge

income gaps between rich and poor, called for ''changes in the structure of our society''; and

WHEREAS, Dr. King, in the last months of his life, began organizing a Poor People's Campaign to, among other things, assemble ''a multiracial army of the poor that would descend on Washington—engaging in nonviolent civil disobedience at the Capitol, if need be—until Congress enacted a poor people's bill of rights''; and

WHEREAS, All of the aforementioned concerns and more continue to be the quest of civil and human rights organizations in the great State of California, across America, and throughout the world; and

WHEREAS, Dr. Martin Luther King, Jr. fought to change public policy from the ''self-inflicted wound of segregation to the pluralistic diverse democracy'' we continue to construct today; and

WHEREAS, The philosophy of open unfettered access to goods, services and information espoused by Dr. King and the Civil Rights Movement had a dramatic effect on American society and cultural thinking and serves as one of the many theoretical foundations for the principle of open access to, and the free flow of, information, goods, services, and equal opportunity; and

WHEREAS, Dr. Martin Luther King, Jr. and the Civil Rights Movement serve as a model for principled leadership and forward thinking, bipartisan public policy; now, therefore, be it

Resolved by the Assembly of the State of California, the Senate thereof concurring, That Monday, January 21, 2002, be observed as the official memorial of Dr. Martin Luther King, Jr.'s birth and his work in the Civil Rights Movement; and be it further

Resolved, That this day, Dr. Martin Luther King, Jr. and the Civil Rights Movement be commemorated for their help in changing public policy from segregation to integration, for the betterment of this, the great State of California and these United States of America.

RESOLUTION CHAPTER 2

Assembly Concurrent Resolution No. 134—Relative to the Rosa Parks Freeway.

[Filed with Secretary of State January 28, 2002.]

WHEREAS, Rosa Parks was born on February 4, 1913, in Tuskegee, Alabama, the first child of James and Leona (Edwards) McCauley; and

WHEREAS, Rosa Louise McCauley married Raymond Parks on December 18, 1932; and

WHEREAS, Rosa Parks was arrested on December 1, 1955, in Montgomery, Alabama, for refusing to give up her seat on a bus to a white man, and her stand for equal rights became legendary; and

WHEREAS, Rosa Parks' arrest for refusing to comply with Montgomery's segregation law was the impetus for a boycott of Montgomery buses, led by Dr. Martin Luther King, Jr., by approximately 42,000 African Americans for 381 days; and

WHEREAS, On November 13, 1956, the United States Supreme Court ruled that Montgomery's segregation law was unconstitutional, and on December 20, 1956, Montgomery officials were ordered to desegregate buses; and

WHEREAS, Rosa Parks is honored as the ''Mother of the Modern Day Civil Rights Movement,'' because her refusal to surrender her seat in compliance with Montgomery's segregation law inspired the civil rights movement, which has resulted in the breakdown of numerous legal barriers and the lessening of profound discrimination against African Americans in this country; and

WHEREAS, The courage and conviction of Rosa Parks laid the foundation for equal rights for all Americans and for the Civil Rights Act of 1964; and

WHEREAS, Rosa Parks was the first woman to join the Montgomery chapter of the NAACP, and was an active volunteer for the Montgomery Voters League; and

WHEREAS, Rosa Parks cofounded the Rosa and Raymond Parks Institute for Self Development in 1987 with Elaine Easton Steele to motivate and direct youth to achieve their highest potential through the ''Pathways to Freedom'' program; and

WHEREAS, Rosa Parks is the recipient of many awards including the Presidential Medal of Freedom, the nation's highest civilian honor, the Congressional Gold Medal of Honor, the highest honor Congress can bestow upon a civilian, and the first International Freedom Conductor Award from the National Underground Railroad Freedom Center, among many other awards and honors; and

WHEREAS, Rosa Parks has dedicated her life to the cause of human rights and truly embodies the love of humanity and freedom; and

WHEREAS, Rosa Parks' life embodies the spirit of not only the African American experience, but the American civil rights movement; and

WHEREAS, This year marks the occasion of Rosa Parks' 89th birthday; now, therefore, be it

Resolved by the Assembly of the State of California, the Senate thereof concurring, That the Legislature hereby designates the portion of Interstate Highway Route 10 between Interstate Highway Route 110 and Interstate Highway Route 405 in the County of Los Angeles as the Rosa

Parks Freeway, in tribute of Ms. Rosa Parks, who helped ignite the civil rights movement; and be it further

Resolved, That the Department of Transportation is requested to determine the cost of appropriate plaques and markers, consistent with the signing requirements for the state highway system, showing this special designation, and upon receiving donations from nonstate sources sufficient to cover that cost, to erect those plaques and markers; and be it further

Resolved, That the Chief Clerk of the Assembly transmit copies of this resolution to the Department of Transportation and the author for appropriate distribution.

RESOLUTION CHAPTER 3

Assembly Concurrent Resolution No. 144—Relative to Black History Month.

[Filed with Secretary of State February 20, 2002.]

WHEREAS, The history of African-Americans here in the United States, as well as throughout the ages, is indeed unique and vibrant, and it is appropriate to celebrate this history during the month of February 2002, which has been proclaimed as Black History Month; and

WHEREAS, The history of the United States is rich with inspirational stories of great men and noble women whose actions, words, and achievements have united Americans and contributed to the success and prosperity of the United States; and

WHEREAS, Among those Americans who have enriched our society are the members of the African-American community—individuals who have been steadfast in their commitment to promoting brotherhood, equality, and justice for all; and

WHEREAS, From the earliest days of the United States, the course of its history has been greatly influenced by Black heroes and pioneers in many diverse areas, from science, medicine, business, and education to government, industry, and social leadership; and

WHEREAS, An old African proverb states, ''Only when you have crossed the river, can you say the crocodile has a lump on his snout.'' Therefore, as we move forward in the 21st century, we believe it is time we began to cross the river. The river in this case will be historical contributions of Africans and African-Americans to our society. Quickly, we will try to bring to light historical accomplishments and facts of Africans and African-Americans across the globe; and

WHEREAS, Scholars and scientists generally accept that Africa is the continent where mankind first saw the light of day. Scientists believe that man, therefore, began in Africa and migrated out to populate the other continents; and

WHEREAS, One of the first civilizations in the history of the world was Egypt, an empire that rose about six thousand years ago along the Nile River. The ancient Egyptians had developed a very complex religious system, called Mysteries, which was also the first system of salvation. In addition, it is understood that Egyptians by their study of astronomy discovered the solar year and were the first to divide it into 12 parts and were the architects of the great pyramids of Egypt; and

WHEREAS, During the first millennium, the Catholic Church had three popes who were either from Africa or of African descent: Saint Victor I (189–99), Saint Miltiades (311–14), and Saint Gelasius I (492–96); and

WHEREAS, The slave trade was a tragic episode in African history and began before August 1619 when the first slaves arrived in Jamestown, Virginia. During the course of the slave trade, an estimated 50 million African men, women, and children were lost to their native continent, though only about 15 million arrived safely to a new home. The others lost their lives on African soil or along the Guinea coast, or finally in holds on the ships during the dreaded Middle Passage across the Atlantic Ocean; and

WHEREAS, In spite of the African slave trade, many Africans and African-Americans continued to move forward in society; during the Reconstruction period, two African-Americans served in the United States Senate and 14 sat in the House of Representatives; and

WHEREAS, The first American to shed blood in the revolution that freed America from British rule was Crispus Attucks (March 5, 1770, Boston Massacre), an African-American seaman and slave. African-Americans also fought in wars including the Battles of Lexington and Concord in April 1775, Ticonderoga, White Plains, Bennington, Brandywine, Saratoga, Savannah, Yorktown, Bunker Hill, the Battle of Rhode Island on August 29, 1775, and other revolutionary war battles, the War of 1812, including, the Battle of New Orleans, the Civil War, the Spanish-American War, World Wars I and II, Korea, and Vietnam; and

WHEREAS, Africans and African-Americans have also been great inventors, inventing such things as the air-conditioning unit, almanac, automatic gear, blood plasma bag, cellular phone, clothes, doorknob, doorstop, electric lamp bulb, elevator, fire escape ladder, fire extinguisher, fountain pen, gas mask, golf tee, guitar, horseshoe, lantern, lawnmower, lawn sprinkler, lock lubricating cup, motor, refrigerator,

riding saddles, spark plug, stethoscope, stove, phone transmitter, thermostat control, traffic light, and typewriter; and

WHEREAS, A number of these brave and accomplished individuals, such as Booker T. Washington, George Washington Carver, Matthew Hansen, Daniel Hale Williams, Dr. Charles Drew, Jackie Robinson, Jesse Owens, Curt Flood, Medgar Evers, and, of course, Dr. Martin Luther King, Jr., are noted prominently in the history books of students nationwide, thus enabling them to learn about the important and lasting contributions of these individuals; now, therefore, be it

Resolved by the Assembly of the State of California, the Senate thereof concurring, That the Legislature takes great pleasure in recognizing February 2002 as Black History Month, urges all citizens to join in celebrating the accomplishments of African-Americans during Black History Month, and encourages the people of California to recognize the many talents, achievements, and contributions that African-Americans make to their communities; and be it further

Resolved That the Chief Clerk of the Assembly transmit copies of this resolution to the author for appropriate distribution.

RESOLUTION CHAPTER 4

Senate Concurrent Resolution No. 51—Relative to California Fitness Month.

[Filed with Secretary of State February 20, 2002.]

WHEREAS, Exercise and fitness activities can increase self-esteem, boost energy, strengthen the heart and muscles, burn calories, and improve cholesterol levels; and

WHEREAS, Exercise and fitness activities are excellent ways to relieve stress, lower the risk of heart disease, hypertension, and diabetes, prevent bone loss, and decrease the risk of some cancers; and

WHEREAS, A person's fitness level has a dramatic effect on the body's ability to produce energy and to reduce fat; and

WHEREAS, A fit person burns a higher percentage of fat not only during activity, but also at rest, fit people have a higher proportion of muscle tissue, which burns more calories than fat, and those with more muscle mass can eat more calories and still maintain a healthy weight; and

WHEREAS, To lose weight and keep it off, one should do an enjoyable, moderate-intensity aerobic activity for 30 to 60 minutes, three to five times a week; and

WHEREAS, A person should also do muscle-strengthening exercises two or three times a week, and should concentrate on maintaining a balanced diet; and

WHEREAS, Most popular diet programs cannot produce long-lasting weight reduction results without exercise; and

WHEREAS, There is no age limit for physical activity. Among the elderly, exercise provides cardiovascular, respiratory, neuromuscular, metabolic, and mental health benefits; and

WHEREAS, Fitness activities have been shown to sharpen mental ability in all people, and to retard the aging process; and

WHEREAS, Maximizing one's energy level, increasing muscle mass, and reducing body fat increases one's chances of living a longer, healthier life; and

WHEREAS, More than 60 percent of American adults do not get the recommended amount of physical activity, and 25 percent of American adults are not active; and

WHEREAS, Nearly all American youths from 12 to 21 years of age are not vigorously active on a regular basis; and

WHEREAS, The State Department of Education reports that a majority of California's children are not physically fit; and

WHEREAS, The Legislature seeks to advance the physical fitness of all Californians by educating them about the benefits of exercise and a balanced diet; and

WHEREAS, The Legislature will increase public awareness about the benefits of exercise and physical fitness by encouraging members to host events in their districts that stimulate physical fitness and increase participation by Californians in activities that promote physical health and benefit both mental and physical well-being; and

WHEREAS, The Legislature encourages its members, as well as organizations, businesses, and individuals, to sponsor and attend physical fitness events that are informative, fun, and result in a number of Californians becoming physically fit; now, therefore, be it

Resolved by the Senate of the State of California, the Assembly thereof concurring, That the Legislature hereby proclaims the month of March 2002 as California Fitness Month, and encourages all Californians to enrich their lives through proper diet and exercise; and be it further

Resolved, That the Secretary of the Senate transmit copies of this resolution to the author for appropriate distribution.

RESOLUTION CHAPTER 5

Assembly Concurrent Resolution No. 147—Relative to Abraham Lincoln's birthday.

[Filed with Secretary of State February 25, 2002.]

WHEREAS, Abraham Lincoln, of all the presidents in the history of the United States, is the one that Americans remember the most and with deepest affection. He rose from humble beginnings to become President of the United States and bravely led his country during its darkest conflict, the Civil War; and

WHEREAS, Mr. Lincoln brought a new honesty and integrity to the White House, and would always be remembered as ''Honest Abe.'' Most of all, he is associated with saving the Union with the final abolition of slavery; and

WHEREAS, Abraham Lincoln was born on February 12, 1809, in Kentucky, and spent the first seven years of his life there; and

WHEREAS, Abraham Lincoln began a long road to become the 16th President of the United States; and

WHEREAS, In his entire life, Abe was only able to go to school for a total of one year. This lack of formal education only made him hungry for more knowledge, and he mastered the Bible, the works of William Shakespeare, and the law; and

WHEREAS, As Abe grew older, he noticed that people loved to listen to stories and he began telling tall tales in the general store where he worked. Customers came and stayed when they knew Abe would be there, just to hear him talk. His family moved once again, this time to Illinois where he began working in a store in the new capital of Springfield; and

WHEREAS, Abe's powerful oratory soon helped him to enter a new arena, that of politics and the law. In 1834 he was elected to the Illinois House of Representatives and began studying to become a lawyer; and

WHEREAS, In 1847 he was elected to Congress, where his opinions against the Mexican War and his vehement opposition to the extension of slavery did not ensure him a long stay there. He was not elected to a second term, so he returned to the practice of law; and

WHEREAS, A few years later, with the passage of the Kansas-Nebraska Act and the Dred Scott decision by the United States Supreme Court, there were few barriers left to the extension of slavery throughout the country; and

WHEREAS, Mr. Lincoln fundamentally believed in the preamble of the Declaration of Independence which states that, ''all men are created equal''; and

WHEREAS, Abe joined the Republicans, a new political party that was opposed to the extension of slavery. The Republicans nominated him for the United States Senate in 1858, and in his acceptance speech, he stated: ''A house divided against itself cannot stand ... . This government cannot endure, permanently half-slave and half-free ... . I do not expect the Union to be dissolved. I do not expect the house to fall but I do expect it will cease to be divided.'' He lost a close election to Stephen A. Douglas, the Democratic Party candidate; and

WHEREAS, Having been nominated by the Republican Party in 1860 as its candidate for the Presidency of the United States, Mr. Lincoln won by a small margin; and

WHEREAS, Shortly after he assumed office, Fort Sumter was attacked and the Civil War began. Despite his military inexperience, President Lincoln displayed a shrewd grasp of military strategy, recognizing from the beginning the importance of the western theater and the necessity of taking advantage of the Union's superior resources. It took him several years, however, to find competent and aggressive generals to implement this strategy; and

WHEREAS, As the war continued, the objectives of the war expanded to not only saving the Union but also to freeing the slaves, and he moved to free the slaves by issuing the Emancipation Proclamation on January 1, 1863; and

WHEREAS, Uncorrupted by the power of the office of the Presidency, Mr. Lincoln enunciated the nation's loftiest ideals during its darkest moment. His Gettysburg Address, regarded as one of the finest speeches in the English language, was delivered by him at Gettysburg, Pennsylvania, on November 19, 1863. On that day, ceremonies were held to dedicate a cemetery for those killed in the Battle of Gettysburg which took place July 1 to 3, 1863, between George Gordon Meade's Army of the Potomac and Robert E. Lee's Army of Northern Virginia; and

WHEREAS, Abraham Lincoln was elected to a second term in 1864. The South subsequently surrendered, and the Civil War ended on April 9, 1865, with the surrender of General Lee to the Union General, Ulysses S. Grant. The difficult task of national reconstruction and reconciliation lay ahead, but President Lincoln would not be the person to lead the country through this difficult period; and

WHEREAS, On April 14, 1865, Mr. and Mrs. Lincoln attended a play at Ford's Theatre in Washington, D.C. A few minutes past 10 p.m., an actor who disagreed with Mr. Lincoln's political opinions stepped into the Presidential box and shot the President. He died the following morning, and his Secretary of War said that Lincoln now ''belonged to the ages''; now, therefore, be it

Resolved by the Assembly of the State of California, the Senate thereof concurring, That the Legislature hereby declares that Abraham Lincoln be honored on his birthday as the virtual symbol of the American dream whereby an ordinary person from humble beginnings can reach the pinnacle of American society as President of the country and serve with honor and courage; and be it further

Resolved, That the Chief Clerk of the Assembly transmit copies of this resolution to the author for appropriate distribution.

RESOLUTION CHAPTER 6

Assembly Concurrent Resolution No. 150—Relative to Spay Day USA 2002.

[Filed with Secretary of State February 27, 2002.]

WHEREAS, Between six and 10 million dogs and cats are euthanized in the United States each year; and

WHEREAS, In most instances these are young, attractive, healthy, friendly, and playful animals that are euthanized simply because there are not enough good homes for them; and

WHEREAS, An additional unknown number of animals die each year due to abandonment, neglect, abuse, starvation, or cruelty because they are unwanted; and

WHEREAS, The spaying and neutering of dogs and cats directly addresses these problems by reducing the number of unwanted animals; and

WHEREAS, Californians can contribute to this effort by spaying and neutering their own pets and by supporting programs in their communities that offer spay and neuter services; and

WHEREAS, Veterinarians, humane societies, and national and local animal protection organizations will join together to advocate the spaying and neutering of dogs and cats on ''Spay Day USA 2002,'' now, therefore, be it

Resolved by the Assembly of the State of California, the Senate thereof concurring, That the Legislature of the State of California declares February 26, 2002, to be Spay Day USA 2002 and that Californians are requested to observe the day by having their dogs or cats spayed or neutered or by contributing to those organizations that provide spay and neuter services; and be it further

Resolved, That the Chief Clerk of the Assembly transmit copies of this resolution to the author for appropriate distribution.

RESOLUTION CHAPTER 7

Senate Joint Resolution No. 22—Relative to gasoline.

[Filed with Secretary of State February 27, 2002.]

WHEREAS, The federal Clean Air Act Amendments of 1990 (P.L. 101-549) mandate the use of reformulated gasoline containing 2 percent, by weight, oxygen in areas designated as nonattainment areas due to high ambient ozone levels in summer months and high ambient carbon monoxide levels in winter months; and

WHEREAS, The federal oxygenate mandate requires the use of oxygenate in gasoline in approximately 70 percent of the California retail gasoline market; and

WHEREAS, California has historically led the nation in enacting air quality improvement measures that provide substantial health, economic, and social benefits for the state's citizens; and

WHEREAS, The State Air Resources Board's Cleaner Burning Gasoline Program has resulted in reducing emissions equivalent to removing 3.5 million cars from California's roads; and

WHEREAS, The California Cleaner Burning Gasoline Program provides greater flexibility than the federal program to produce gasoline that meets stringent emission reduction mandates; and

WHEREAS, Methyl tertiary-butyl ether (MTBE) has been used in California as the primary oxygenate additive to gasoline because its relatively low vapor pressure (RVP) simplifies the production of low-RVP summer gasolines, and because of its compatibility with the blending and distribution system for gasoline, its ability to be transported by pipeline, and its high octane rating; and

WHEREAS, The Environmental Protection Agency's Blue Ribbon Panel on Oxygenates in Gasoline recommended that the 2-percent oxygenate requirement be removed and that MTBE be reduced substantially; and

WHEREAS, Pursuant to Chapter 816 of the Statutes of 1997, the University of California prepared a report that assessed the health and environmental effects of MTBE and submitted that report to the Legislature and the Governor in November 1998; and

WHEREAS, The University of California report found that there are significant risks and costs associated with water contamination due to the use of MTBE because it is highly soluble in water and will transfer

readily to groundwater from leaking underground storage tank systems and other components of the gasoline distribution system; and

WHEREAS, The County of Santa Clara, the City of Santa Monica, the Lake Tahoe region, and the Sacramento area, as well as other municipalities in other areas of the state, have all been forced to shut down public drinking water wells due to MTBE contamination; and

WHEREAS, The University of California report found that over 60 percent of the reservoirs tested in California have detectable levels of MTBE; and

WHEREAS, The University of California report found that there is no significant additional air quality benefit to the use of oxygenates such as MTBE in reformulated gasoline, relative to the alternative nonoxygenated formulations identified by the California Cleaner Burning Gasoline Program; and

WHEREAS, United States Senators Diane Feinstein and James Inhofe previously introduced legislation, S. 947, to grant the governor of a state the power to waive the 2-percent oxygenate content requirement for reformulated or clean burning gasoline as long as the fuel meets all other requirements for reformulated gasoline other than those regarding oxygen content; and

WHEREAS, California has previously sought a waiver from the United States Environmental Protection Agency of the oxygen content requirement; and

WHEREAS, The United States Environmental Protection Agency denied California's request for a waiver on the grounds that there was not sufficient evidence that the waiver would help California to reduce harmful levels of air pollutants; and

WHEREAS, California has sought and received waivers from other provisions of the federal Clean Air Act, including Section 209(b)(1) of that act, and has demonstrated no loss of air quality benefits after those waivers have been issued; now, therefore, be it

Resolved by the Senate and Assembly of the State of California, jointly, That the Legislature of the State of California respectfully memorializes the United States Environmental Protection Agency to reconsider granting an administrative waiver of the federal Clean Air Act's oxygenated gasoline requirement to the State of California, to the extent permitted by the federal Clean Air Act, given the state's independent requirements for clean gasoline that meet both state and national ambient air quality standards; and be it further

Resolved, That the Legislature of the State of California respectfully memorializes the Congress of the United States to enact legislation, if an administrative waiver of the federal Clean Air Act is not granted by the United States Environmental Protection Agency, similar to, or including, the Feinstein-Inhofe legislation, that would authorize

California to waive the oxygen content requirement for reformulated gasoline only if the fuel meets other requirements in the federal Clean Air Act for reformulated gasoline; and be it further

Resolved, That the Legislature of the State of California respectfully memorializes the President of the United States to sign that legislation if it is enacted by the Congress of the United States; and be it further

Resolved, That the Secretary of the Senate transmit copies of this resolution to the President and Vice President of the United States, the Secretary of the United States Environmental Protection Agency, the Speaker of the House of Representatives, the Majority Leader of the Senate, and to each Senator and Representative from California in the Congress of the United States.

RESOLUTION CHAPTER 8

Senate Concurrent Resolution No. 58—Relative to California Eating Disorders Awareness Week.

[Filed with Secretary of State February 27, 2002.]

WHEREAS, According to the National Eating Disorders Association, conservative estimates indicate that 5 to 10 percent of girls and women and approximately one million men are struggling with eating disorders, including anorexia, bulimia, and other related conditions, in the United States; and

WHEREAS, The Kristen Watt Foundation, a northern California eating disorders awareness organization, states that 58 percent of females and 38 percent of males are at risk for developing an eating disorder; and

WHEREAS, Approximately 80 percent of women are dissatisfied with their appearances and 42 percent of girls in the first through third grades want to be thinner; and

WHEREAS, Ninety-one percent of women of college age report that they attempt, either frequently or continuously, to control their weight; and

WHEREAS, Societal definitions of beauty create contexts in which impressionable young girls learn to place great value on the size and shape of their bodies; and

WHEREAS, Internet Web sites have been dedicated to the sole purpose of instructing people on how to be anorexic and bulimic and also glamorize skeletal body types; and

WHEREAS, Contrary to public myth, eating disorders strike young and old, rich and poor, and all races and creeds, and cross all social paths; and

WHEREAS, Eating disorders have reached epidemic proportions and have increased the need for awareness of the health dangers of starvation, laxative, and diuretic abuse, and excessive and compulsive exercise; and

WHEREAS, Embarrassment and secrecy contribute to the underreporting of eating disorders; and

WHEREAS, The most effective prevention or treatment of these disorders is through public education and awareness; and

WHEREAS, It is essential that communities, schools, local organizations, and medical professionals raise consciousness about the deadly and growing phenomenon of eating disorders; now, therefore, be it

Resolved by the Senate of the State of California, the Assembly thereof concurring, That the Legislature proclaims the week of February 24, 2002, to March 3, 2002, as California Eating Disorders Awareness Week, to coincide with National Eating Disorders Awareness Week; and be it further

Resolved, That the Secretary of the Senate transmit copies of this resolution to the Governor.

RESOLUTION CHAPTER 9

Assembly Concurrent Resolution No. 130—Relative to Gold Star Mothers Week.

[Filed with Secretary of State March 6, 2002.]

WHEREAS, To bear a gold star is to display the loss of one's child to war, as a recognition of the grand sacrifices of our fighting men and women; and

WHEREAS, To facilitate this acknowledgment there was founded, in the District of Columbia, an organization called the American Gold Star Mothers, originally incorporated on January 5, 1929, and comprised of mothers who had lost a son or daughter in World War I; and

WHEREAS, Eligibility for membership was expanded to include mothers who lost a son or daughter in World War II, the Korean War, the Vietnam War, or the Persian Gulf War; and

WHEREAS, Countless thousands have displayed the gold star and did acknowledge that their child had helped to secure the blessings of liberty for this and all future generations; and

WHEREAS, In the windows of America can still be seen a shimmering gold star, each representing a child lost but never forgotten. This candlelit display of a gold star accompanies the loss of ones so cherished and so generous as were our fallen heroes; and

WHEREAS, The purposes of the American Gold Star Mothers is to keep alive and develop the spirit that promotes world service and maintain the ties of fellowship born of that service and to assist and further all patriotic work; and

WHEREAS, It is essential that we inculcate a sense of individual obligation to the community, state, and nation to assist veterans of World War I, World War II, the Korean War, the Vietnam War, the Persian Gulf War, and other strategic areas, and their dependents, in the presentation of claims to the United States Veterans' Administration, aid in any way the men and women who served and died or were wounded or incapacitated during hostilities, and perpetuate the memory of those whose lives were sacrificed in our wars; and

WHEREAS, It is no less important that we maintain true allegiance to the United States of America, inculcate lessons of patriotism and love of country in the communities in which we live, inspire respect for the stars and stripes in the youth of America, extend needful assistance to all American Gold Star Mothers and, whenever possible, their descendents, and promote peace and good will for the United States and all other nations; and

WHEREAS, Members of the American Gold Star Mothers spend countless hours contributing both time and resources to provide volunteer services for veterans and their family members; now, therefore, be it

Resolved by the Assembly of the State of California, the Senate thereof concurring, That the Legislature designates the week of May 27 to June 2, 2002, inclusive, as Gold Star Mothers Week; and be it further

Resolved, That Californians are urged to pay heed to the heroic sacrifices of our fallen men and women and be aware of the sacrifices made by their loving parents.

RESOLUTION CHAPTER 10

Assembly Concurrent Resolution No. 145—Relative to Nutrition Week 2002.

[Filed with Secretary of State March 6, 2002.]

WHEREAS, Sound nutrition is an essential component of a healthy and productive lifestyle; and

WHEREAS, According to the Centers for Disease Control and Prevention, yearly spending by the state and federal governments per person for disease treatment is more than 1,000 times greater than the cost of adopting preventive measures promoting proper diet and exercise; and

WHEREAS, Nearly $250 billion is spent each year on health care costs caused by diseases that are linked to diets high in fat and low in fruits and vegetables each year in the United States. The United States Department of Agriculture estimates that if Americans consumed healthier diets, at least $71 billion per year in medical costs, lost productivity, and premature deaths could be prevented; and

WHEREAS, The prophylactic effect of a healthy diet in preventing disease is demonstrated by research suggesting that phytonutrients, which are natural substances found in plants, working together with other nutrients found in fruits, vegetables, and nuts, can help slow the aging process and reduce the risk of many diseases, including cancer, heart disease, stroke, high blood pressure, cataracts, and urinary tract infections; and

WHEREAS, Nutrition Week is an international program to enhance the understanding and collaboration among nutrition industry specialists and raise the profile of nutrition both within the health care community and among the general public; and

WHEREAS, The American College of Nutrition, the American Society for Clinical Nutrition, the American Society for Parenteral and Enteral Nutrition, and the North American Association for the Study of Obesity are convening this year's Nutrition Week Symposium from February 23 to February 27, 2002, and have worked diligently to organize it; and

WHEREAS, At this symposium, known as Nutrition Week 2002, state-of-the-art clinical approaches and research findings will be presented, and a comprehensive and multidisciplinary range of topics will be discussed that include obesity and nutrition, parenteral and enteral nutrition, nutrition support, osteoporosis, neuropsychology, micronutrients and phytonutrients, phytoestrogens, nutraceuticals, alternative therapies, and chronic diseases, such as diabetes, heart disease, and cancer; now, therefore, be it

Resolved by the Assembly of the State of California, the Senate thereof concurring, That the Legislature proclaims the week of February 24 to March 2, 2002, to be Nutrition Week 2002; and be it further

Resolved, That the Chief Clerk of the Assembly transmit copies of this resolution to the author for appropriate distribution.

RESOLUTION CHAPTER 11

Assembly Concurrent Resolution No. 153—Relative to Read Across America.

[Filed with Secretary of State March 6, 2002.]

WHEREAS, The Members of the California Legislature have learned of the Read Across America campaign created by the National Education Association with the full support of the California Teachers Association to motivate children to read; and

WHEREAS, The Members of the California Legislature stand firmly committed to promoting reading as the catalyst for our pupils' future academic success, their preparation for California's and America's jobs of the future, and their ability to compete in a global economy; and

WHEREAS, The Members of the California Legislature believe in the importance of joining teachers in their efforts to enhance community involvement in the education of our youth; and

WHEREAS, The Members of the California Legislature believe that education investment is the key to our state's well-being and long-term quality of life; and

WHEREAS, The National Education Association and the California Teachers Association Read Across America is a national celebration of Dr. Seuss' birthday on March 2 that is designed to promote reading and adult involvement in the education of our state's and nation's pupils; now, therefore, be it

Resolved, by the Assembly of the State of California, the Senate thereof concurring, That the California Legislature hereby proclaims March 2, 2002, as Read Across California Day; and be it further

Resolved, That the California Legislature calls on the residents of California to ensure that every child is in a safe place reading together with a caring adult on the evening of March 2, 2002; and be it further

Resolved, That the California Legislature enthusiastically endorses Read Across America and recommits our state to supporting programs and activities designed to make the children in our state and our nation the best readers in the world; and be it further

Resolved, That the California Legislature commends the National Education Association and the California Teachers Association for their efforts on behalf of Read Across America; and be it further

Resolved, That the Chief Clerk of the Assembly transmit a suitably prepared copy of this resolution to the author for appropriate distribution.

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RESOLUTION CHAPTER 12

Senate Concurrent Resolution No. 61—Relative to California Nonprofits and Philanthropy Week.

[Filed with Secretary of State March 15, 2002.]

WHEREAS, One of the great strengths of California is the presence of vigorous nonprofit and philanthropic organizations that provide a private means to pursue public purposes outside the confines of either the market or the state; and

WHEREAS, Citizens of California have joined together to form over 124,711 nonprofits including 80,188 active 501(c)(3) charitable nonprofits, 5,101 private foundations, and 26,000 religious groups that employ over 889,614 people and receive and spend over $76 billion per year; and

WHEREAS, Nonprofit and philanthropic organizations touch the lives of every person in California by serving people from all walks of life, socioeconomic groups, political orientations, ethnicities, ages, genders, and cultural backgrounds; and

WHEREAS, Embraced within the nonprofit sector are some of our state's premier universities, hospitals, symphonies, museums, theaters, and grassroots groups as well as thousands of community organizations that channel our impulses for charity, justice, and compassion to serve the common good and support and empower those in greatest need; and

WHEREAS, Half of all hospital care, most human services, a significant share of higher education, most of low-cost housing, almost all arts and culture, and most social justice and environmental programs are provided by nonprofits; and

WHEREAS, Over 15 million California citizens volunteer three to five hours per week with nonprofit organizations; and

WHEREAS, The 5,101 independent foundations, 100 corporate foundations, and 25 community foundations, with assets of $40 billion, annually give $1.28 billion in grants to California nonprofits, an aggregate of 6.1 percent of assets, $300 million more than required by law in 1997, including seven of the nation's largest independent foundations, and seven of the nation's largest community foundations; and

WHEREAS, Nonprofit social service and philanthropic organizations have helped millions of Americans get back on their feet, enabling them to become active, productive citizens; now, therefore, be it

Resolved by the Senate of the State of California, the Assembly thereof concurring, That the Legislature recognizes the importance and value of nonprofit and philanthropic organizations; and be it further

Resolved, That the California Legislature hereby proclaims March 31 to April 6, 2002, inclusive, as California Nonprofits and Philanthropy Week as presented by the California Association of Nonprofits and its Nonprofit Policy Council; and be it further

Resolved, That the Secretary of the Senate transmit copies of this resolution to the author for appropriation distribution.

RESOLUTION CHAPTER 13

Assembly Concurrent Resolution No. 129—Relative to Crime Victims' Rights Week.

[Filed with Secretary of State March 20, 2002.]

WHEREAS, Violent crimes that invade homes and shatter even the most trusting relationships continue to plague the citizens of California; and

WHEREAS, All Californians are affected by these violent acts, not just the victims of violent crimes; and

WHEREAS, The most effective aid that we can provide to victims of crime is to prevent them from becoming victims in the first place; and

WHEREAS, The respect and protection of victims' rights within the legal process is one of the most critical components of an effective criminal justice system; and

WHEREAS, Victims and witnesses of crime require our special attention to ensure that they are thoroughly informed about, and participate effectively in, our criminal justice system; and

WHEREAS, To the maximum extent allowed by law, victims of violent crime should receive compensation for their losses; and

WHEREAS, Each day, thousands of victims and witnesses receive assistance from victim support organizations, victim-witness assistance centers, private service providers, and state and local governments; and

WHEREAS, The criminal justice system in this state must persist in its effort to better coordinate and improve the quality of services provided to victims and witnesses; and

WHEREAS, Time after time, California citizens have continually demonstrated their commitment to victims of violent crimes; and

WHEREAS, The Legislature and the voters by initiative have expanded the death penalty and enacted the ''Three Strikes'' law as deterrents to violent crime; and

WHEREAS, Each year, the observance of the National Crime Victims' Rights Week focuses on the problems confronting victims of crime and the services available to support these victims; and

WHEREAS, National Crime Victims' Rights Week increases the public's awareness of crime victims' circumstances and acknowledges the combined efforts of citizens, government, and the criminal justice system to improve victims' services in California; now, therefore, be it

Resolved by the Assembly of the State of California, the Senate thereof concurring, That the week of April 22 through 28, 2002, be recognized as Crime Victims' Rights Week in California; and be it further

Resolved, That on the occasion of Crime Victims' Rights Week, the Legislature encourages all Californians to join in this observance by wearing victim awareness ribbons to demonstrate their commitment to assisting victims and to the elimination of crime in the Golden State.

RESOLUTION CHAPTER 14

Assembly Concurrent Resolution No. 133—Relative to Merchant Marine Remembrance Week.

[Filed with Secretary of State March 20, 2002.]

WHEREAS, The Merchant Marine has faithfully served our country in times of war and peace by transporting life and cargo to every corner of the world; and

WHEREAS, The Merchant Marine helped to win wars and maintain peace by providing necessary materials, food, and supplies to assist many nations in rebuilding their countries and economies; and

WHEREAS, During World War II, the Merchant Marine transported troops, and delivered 75 percent of all military equipment and supplies to battlefronts throughout the world in the face of enemy attacks and through violent seas; and

WHEREAS, In doing so, 6,835 were killed, over 11,000 were wounded, and 604 were taken as prisoners of war, of whom 61 died in POW camps; and

WHEREAS, The Merchant Marine's contribution to the American Revolution, the War of 1812, World Wars I and II, the Korean War, the Vietnam War, and all other military and human relief efforts should be made known to all Americans; now, therefore, be it

Resolved by the Assembly of the State of California, the Senate thereof concurring, That the Legislature does hereby designate June 10 through June 16, 2002, as Merchant Marine Remembrance Week, and encourages all Californians to join in this observance; and be it further

Resolved, That the Chief Clerk of the Assembly prepare and transmit copies of this resolution to the author for appropriate distribution.

RESOLUTION CHAPTER 15

Assembly Concurrent Resolution No. 138—Relative to Greek Independence Day.

[Filed with Secretary of State March 20, 2002.]

WHEREAS, The ancient Greeks developed the concept of democracy, in which the supreme power to govern was vested in the people; and

WHEREAS, The ancient Greeks established the Olympic Games, the largest display of athletic skill and competitive spirit in the ancient world; and

WHEREAS, The Founding Fathers of the United States drew heavily on the political experience and philosophy of ancient Greece in forming our representative democracy; and

WHEREAS, The story of Greek military tactics used at the Battle of Marathon in 490 B.C. is still mandatory reading at the National War College in Washington, D.C.; and

WHEREAS, Greek soldiers were with the United States Marines on the shores of Tripoli in the military operations memorialized in the United States Marines' Hymn; and

WHEREAS, Many Americans fought alongside the Greeks in their fight for Greek independence, while stirring speeches by President James Monroe and Daniel Webster led the Congress to send funds and supplies to aid the Greeks in the struggle for freedom; and

WHEREAS, Greek Commander in Chief Petros Mavromichalis, a founder of the modern Greek state, said to the citizens of the United States in 1821, ''it is in your land that liberty has fixed her abode and ... in imitating you, we shall imitate our ancestors and be thought worthy of them if we succeed in resembling you''; and

WHEREAS, Greece is one of only three nations in the world, beyond the former British Empire, that has been allied with the United States in every major international conflict in the 20th century, including World War I, World War II, Korea, Vietnam, Desert Storm, and the Balkans; and

WHEREAS, Greece played a major role in the World War II struggle to protect freedom and democracy through such bravery as was shown in the historic Battle of Crete and in Greece, presenting the Axis land war with its first major setback; and

WHEREAS, Sir Winston Churchill said of the Greeks after this fighting, ''Hence we will not say that Greeks fight like heroes, but that heroes fight like Greeks''; and

WHEREAS, The author of a military history said, ''The campaign in Greece and in Crete forced Hitler to postpone the invasion of Russia ... and to fight a winter campaign ... which brought Hitler's war machine to a standstill''; and

WHEREAS, The government of Greece has declared its solidarity with the American people and has pledged to back efforts to combat and eradicate terrorism in the aftermath of terrorist attacks on the United States of America; and

WHEREAS, Greece has presently sent its troops to Afghanistan to participate in an international peacekeeping force, the first Greek soldiers in Afghanistan since the time of Alexander the Great in the 4th century B.C.; and

WHEREAS, Greece and the United States of America are at the forefront of the effort for freedom, democracy, peace, stability, and human rights; and

WHEREAS, Those and other ideals have forged a close bond between our two nations and their peoples; and

WHEREAS, March 25, 2002, marks the 181st anniversary of the beginning of the revolution that freed the Greek people from the Ottoman Empire; and

WHEREAS, It is proper and desirable to celebrate with the Greek people and to reaffirm the democratic principles from which our two great nations were born; now, therefore, be it

Resolved by the Assembly of the State of California, the Senate thereof concurring, That the Legislature hereby designates March 25, 2002, as ''Greek Independence Day: A Day of Celebration of Greek and American Democracy''; and be it further

Resolved, That the Chief Clerk of the Assembly transmit copies of this resolution to the author for distribution.

RESOLUTION CHAPTER 16

Assembly Concurrent Resolution No. 139—Relative to Colorectal Cancer Awareness Month.

[Filed with Secretary of State March 20, 2002.]

WHEREAS, Colorectal cancer is the second leading cause of cancer deaths in men and women combined in the United States; and

WHEREAS, The American Cancer Society estimates that, in 2002, in the United States over 148,000 new cases of colorectal cancer will be diagnosed and 56,600 individuals are expected to die from the disease; and

WHEREAS, In the State of California an estimated 4,900 individuals will die from colorectal cancer and 12,900 new cases will be diagnosed; and

WHEREAS, Screening for colorectal cancer is underutilized and less than 50 percent of individuals above 50 years of age receive annual screenings for colorectal cancer; and

WHEREAS, Adopting a healthy diet at a young age can significantly reduce the risk of developing colorectal cancer; and

WHEREAS, Regular screenings can detect polyps that lead to colorectal cancer and can save lives; and

WHEREAS, Education can help inform the public of methods of prevention and symptoms that lead to early detection; and

WHEREAS, The State of California should help inform the public about colorectal cancer prevention and screening; now, therefore, be it

Resolved by the Assembly of the State of California, the Senate thereof concurring, That the month of March 2002 is hereby declared ''Colorectal Cancer Awareness Month'' in California; and be it further

Resolved, That the Chief Clerk of the Assembly transmit copies of this resolution to the author for appropriate distribution.

RESOLUTION CHAPTER 17

Assembly Concurrent Resolution No. 155—Relative to Afghan New Year.

[Filed with Secretary of State March 20, 2002.]

WHEREAS, Citizens of Afghanistan began emigrating from Afghanistan and settling in northern California in the 1980s, during the Soviet invasion of their country; and

WHEREAS, Many Afghans were drawn to the San Francisco Bay area because of available resources, including refugee and social services; and

WHEREAS, The Afghan-American community now numbers between 40,000 and 60,000 in the San Francisco Bay area, and approximately 15,000 in the Fremont area alone; and

WHEREAS, Afghan-Americans have enriched their communities by establishing businesses, social service agencies, and mosques, and by working in schools, hospitals, and community organizations; and

WHEREAS, The San Francisco Bay area and the United States have benefited significantly from the work, contributions, and perspectives of Afghan-Americans; and

WHEREAS, After the terrorist attacks on the World Trade Center in New York City and the Pentagon in Washington, D.C., on September 11, 2001, Afghan-Americans joined Americans around the country in strongly denouncing terrorism; and

WHEREAS, March 21 typically is celebrated as the first day of the Afghan New Year; now, therefore, be it

Resolved by the Assembly of the State of California, the Senate thereof concurring, That the Legislature of the State of California, in recognition of the contributions Afghan-Americans have made to the richly diverse State of California, recognizes March 21 as the first day of the Afghan New Year.

RESOLUTION CHAPTER 18

Assembly Concurrent Resolution No. 162—Relative to Professional Social Work Month.

[Filed with Secretary of State March 20, 2002.]

WHEREAS, Social workers are the professionals on the front lines of California's human service delivery system; and

WHEREAS, Social workers empower families and individuals to lead productive and satisfying lives, organize communities for social and economic change, perform cutting edge research, and administer effective social programs statewide; and

WHEREAS, Social workers are the nation's largest providers of mental health and therapy services, are prominent leaders who advocate on behalf of and deliver services to older adults, and are a crucial link between students, parents, and teachers within the school community; and

WHEREAS, Social workers assist victims of violence and work to eradicate the causes of violence through community, institutional, and public policy initiatives; and

WHEREAS, Social workers recognize that any violent environment, whether it contains physical violence, emotional or psychological abuse, or discrimination, weakens the basic right of every individual to live with dignity, and diminishes the quality of life; and

WHEREAS, Social workers recognize and value California's diversity and the multicultural backgrounds of those in the communities in which they work and social workers strive to promote and implement

culturally competent practices in all areas of the profession; now, therefore, be it

Resolved by the Assembly of the State of California, the Senate thereof concurring, That in recognition of the contributions that professional social workers make in helping families and individuals move beyond impediments to a life of accomplishment, dignity, and purpose, the month of March 2002 is hereby proclaimed as Professional Social Work Month and that all Californians are urged to join with the social work profession in support of appropriate programs, ceremonies, and activities designed to achieve its goals.

RESOLUTION CHAPTER 19

Assembly Concurrent Resolution No. 164—Relative to Irish-American Heritage Month.

[Filed with Secretary of State March 25, 2002.]

WHEREAS, Millions of Irish people, faced with severe hardship due to famine and poverty in their nation, immigrated to the United States over the last several centuries in search of a more promising future for themselves and their families; and

WHEREAS, Irish-Americans initially suffered prejudice and discrimination upon first arriving in the United States. As the years went on, Irish-Americans became very involved in the community and have made numerous contributions in all aspects of American society and culture, especially in California; and

WHEREAS, Irish-Americans played vital roles in the development of the United States. Nine Irish-Americans were signers of the Declaration of Independence, and 19 Presidents of the United States have been of Irish heritage, including John F. Kennedy, Ronald Reagan, and Bill Clinton; and

WHEREAS, Irish-Americans have also played a major role in California politics. Many governors, legislative leaders, city mayors, and other public officials who have shaped the development of California over the years have been of Irish descent; and

WHEREAS, Irish-Americans have been very influential in the building and architecture of historic buildings, such as James Hoban, the architect who designed the White House and was involved in the design and building of the United States Capitol; and

WHEREAS, Irish-Americans were very involved in the development of infrastructure throughout the United States and especially in California. This included work on railroads and bridges that connected

the West to the East. The Irish were also instrumental in the building of dams, roads, canals, and buildings that expanded greatly in the late 1800s; and

WHEREAS, Many Irish-Americans have made their mark in pursuit of public safety and have risked or lost their lives on countless occasions in carrying out their duties; and

WHEREAS, Irish-Americans have served with distinction in every war that this nation has fought. Many of the outstanding soldiers who fought for American freedom in the Revolutionary War were of Irish descent. Since then, Irish-Americans have sacrificed their lives in every other war in which the United States has fought; and

WHEREAS, Many Irish-American entrepreneurs have contributed greatly to the United States economy including Henry Ford, William Randolph Hearst, and Alexander Stewart, the inventor of the American department store; and

WHEREAS, Irish-Americans have contributed to the American literary tradition through great authors including Flannery O'Connor, Eugene O'Neill, F. Scott Fitzgerald, Mary McCarthy, and Frank McCourt; and

WHEREAS, Irish-Americans have been instrumental in the development of American entertainment with such stars as actor and dancer Gene Kelly, actress Grace Kelly, actor and singer Bing Crosby, and director John Ford being of Irish heritage; and

WHEREAS, Today, over 44 million Americans claim Irish heritage, and they continue to contribute to American and California politics, economy, and culture; now, therefore, be it

Resolved by the Assembly of the State of California, the Senate thereof concurring, That the Legislature, in honor of the multitude of contributions that Irish-Americans have made to make this a better country and state for all people, designates March 2002 to be Irish-American Heritage Month in California and calls upon the people of the state to observe this month with appropriate ceremonies, programs, and activities, especially on March 17, since everyone is Irish on St. Patrick's Day; and be it further

Resolved, That the Chief Clerk of the Assembly prepare and transmit copies of this resolution to the author for appropriate distribution.

RESOLUTION CHAPTER 20

Assembly Concurrent Resolution No. 160—Relative to Endometriosis Awareness Month.

[Filed with Secretary of State March 25, 2002.]

WHEREAS, Endometriosis, a condition involving abnormal uterine cell growth, affects nearly 80 million teens and women worldwide; and

WHEREAS, Over 5.5 million women in the United States alone suffer from endometriosis; and

WHEREAS, Endometriosis affects more women than breast cancer does; and

WHEREAS, Endometriosis can have a debilitating impact on a woman's life and her relationships, in some cases rendering her unable to work, to care for herself or her family, or to go about her normal routine; and

WHEREAS, Studies have shown an elevated risk of certain cancers and autoimmune diseases in endometriosis patients; and

WHEREAS, Endometriosis is the leading cause of female infertility and hysterectomy; and

WHEREAS, There is currently no definitive cure for endometriosis; and

WHEREAS, The Endometriosis Research Center (ERC) is a nonprofit organization, which was founded in 1997 to address the needs of the international community of individuals who suffer from endometriosis and to improve the quality of life for those with the disease through education and support programs; and

WHEREAS, The ERC works to raise awareness about endometriosis throughout the medical and lay communities and raises funds to facilitate and promote existing research for effective treatments and, ultimately, a cure for endometriosis; and

WHEREAS, Events and activities, including ''ERC Casual Days,'' are held annually during the month of March in celebration of the ERC's anniversary; and

WHEREAS, The goal of these events is to educate the general public about the significance of this disease, to support and assist women living with the disease, and to raise funds for the organization's efforts; now, therefore, be it

Resolved by the Assembly of the State of California, the Senate thereof concurring, That the Legislature proclaims the month of March 2002 as Endometriosis Awareness Month; and be it further

Resolved, That the Chief Clerk of the Assembly transmit copies of this resolution to the author for appropriate distribution.

RESOLUTION CHAPTER 21

Senate Concurrent Resolution No. 60—Relative to arts education.

[Filed with Secretary of State March 26, 2002.]

WHEREAS, Arts education, which includes dance, music, theatre, and the visual arts, is an essential and integral part of basic education for all pupils in kindergarten and grades 1 to 12, inclusive; and

WHEREAS, Instruction in the basic skills and knowledge of the arts provides for the development of critical and creative thinking and perceptual abilities that extend to all careers and areas of life; and

WHEREAS, Study of the arts relates naturally to much of the content of the state's educational curricula; and

WHEREAS, The arts are collectively one of the most important repositories of culture; and

WHEREAS, Senate Bill 1390, of the 1999–2000 Regular Session of the Legislature authored by Senator Kevin Murray and signed by Governor Gray Davis, September 12, 2000, calls for the adoption of visual and performing arts content standards by the State Board of Education and states that instruction in the visual and performing arts should be made available to all pupils; and

WHEREAS, Many national and state professional arts education associations hold celebrations in the month of March, giving California schools a unique opportunity to focus on the value of the arts for all pupils, to foster crosscultural understanding, to give recognition to the state's outstanding young artists, and to enhance public support for this important part of the curriculum; now, therefore, be it

Resolved by the Senate of the State of California, the Assembly thereof concurring, That the Legislature declares March 2002, Arts Education Month and encourages all educational communities to celebrate the arts with meaningful pupil activities and programs that demonstrate learning and understanding in the visual and performing arts, and urges all residents to become interested in and give full support to quality school arts programs for children and youth; and be it further

Resolved, That the Secretary of the Senate transmit copies of this resolution to the author for appropriate distribution.

RESOLUTION CHAPTER 22

Senate Concurrent Resolution No. 71—Relative to California Wildland Firefighters Memorial Highway.

[Filed with Secretary of State March 26, 2002.]

WHEREAS, The Decker Canyon fire was ignited on August 8, 1959, when a car drove off a Highway 74 embankment, crashing through brush to the canyon floor, some 200 feet below, where the vehicle burst into

flames, and winds whipped the flames into a firestorm racing uphill toward firefighters battling the blaze from above; and

WHEREAS, Six firefighters made the ultimate sacrifice while protecting and serving the people of California by battling the Decker Canyon fire; and

WHEREAS, Twenty-seven other firefighters were injured in the Decker Canyon fire; and

WHEREAS, California experiences hundreds of wildland fires every year, and thousands of firefighters from local, state, and federal agencies fight these fires to protect lives and property; and

WHEREAS, These men and women of the wildland firefighting services are dedicated in their efforts to save lives and property from destruction; and

WHEREAS, Nearly every year wildland firefighters are injured and killed fighting wildland fires across the State of California; and

WHEREAS, The dedication of the California Wildland Firefighter's Memorial Highway will stand as a fine testament to not only to the wildland firefighters who lost their lives at the Decker Canyon fire, but to all men and women of the wildland firefighting services whose dedication efforts to save lives and property from destruction display great pride; and

WHEREAS, It is appropriate that the portion of State Highway Route 74 between Lake Elsinore and San Juan Capistrano in the Counties of Riverside and Orange be dedicated to the memory of wildland firefighters who have made the ultimate sacrifice in their service to the people of the State of California; now, therefore, be it

Resolved by the Senate of the State of California, the Assembly thereof concurring, That the portion of State Highway Route 74 between Lake Elsinore and San Juan Capistrano in the Counties of Riverside and Orange is hereby officially designated the California Wildland Firefighters Memorial Highway; and be it further

Resolved, That the Department of Transportation is requested to determine the cost of appropriate plaques and markers, consistent with the signing requirements for the state highway system, showing the special designation and, upon receiving donations from nonstate sources covering that cost, to erect those plaques and markers; and be it further

Resolved, That the Secretary of the Senate transmit a copy of this resolution to the Director of Transportation.

RESOLUTION CHAPTER 23

Assembly Concurrent Resolution No. 141—Relative to California Holocaust Memorial Week.

[Filed with Secretary of State April 8, 2002.]

WHEREAS, More than 60 years have passed since the tragic events we now call the Holocaust transpired, in which the dictatorship of Nazi Germany murdered six million Jews as part of a systematic program of genocide known as ''The Final Solution of the Jewish Question''; and

WHEREAS, The Holocaust was a tragedy of proportions the world had never before witnessed; and

WHEREAS, Five million other people were also murdered by the Nazis; and

WHEREAS, We must be reminded of the reality of the Holocaust's horrors so they will never be repeated; and

WHEREAS, Each person in California should set aside moments of his or her time every year to give remembrance to those who lost their lives in the Holocaust; and

WHEREAS, The United States Holocaust Memorial Council has designated the week of April 7 through April 14, 2002, as Holocaust Memorial Week—Days of Remembrance for Victims of the Holocaust; and

WHEREAS, April 9, 2002, is Yom HaSho'ah, and has been designated internationally as a day of remembrance for victims of the Holocaust; now, therefore, be it

Resolved by the Assembly of the State of California, the Senate thereof concurring, That the week of April 7 through April 14, 2002, be proclaimed as California Holocaust Memorial Week, and that Californians are urged to observe these days of remembrance for victims of the Holocaust in an appropriate manner; and be it further

Resolved, That the Chief Clerk of the Assembly transmit copies of this resolution to the author for appropriate distribution.

RESOLUTION CHAPTER 24

Assembly Joint Resolution No. 28—Relative to pancreatic cancer.

[Filed with Secretary of State April 8, 2002.]

WHEREAS, Approximately 29,000 new cases of pancreatic cancer were diagnosed nationwide in 2001; and

WHEREAS, An estimated 28,000 people died from pancreatic cancer during 2001, representing more than 5 percent of all cancer deaths in the United States; and

WHEREAS, The average life expectancy after diagnosis with metastatic disease is just three to six months; and

WHEREAS, About 85 percent of pancreatic cancer victims die within a year of diagnosis, and less than 5 percent survive as long as five years; and

WHEREAS, The 99-percent mortality rate for pancreatic cancer is the highest of any cancer; and

WHEREAS, Pancreatic cancer ranks as the fourth most common cause of cancer death among men and women; and

WHEREAS, There is currently no physiological marker or screening test that permits early diagnosis of pancreatic cancer; and

WHEREAS, Pancreatic cancer is among the most aggressive of all cancers, but study of the disease has attracted comparatively little funding; and

WHEREAS, According to the National Cancer Institute, pancreatic cancer received approximately $20 million in federal research funding, roughly 7 percent of the funding level per fatality of that of breast cancer; and

WHEREAS, There is a critical need to support research that identifies new methods of detecting and treating pancreatic cancer; now, therefore, be it

Resolved by the Assembly and Senate of the State of California, jointly, That the Legislature of the State of California urges the President and Congress of the United States to expand federally funded research efforts aimed at developing a reliable means of detecting pancreatic cancer in its early stages, when the disease is more effectively treatable; and be it further

Resolved, That the Chief Clerk of the Assembly transmit copies of this resolution to the President and Vice President of the United States, to the Speaker of the House of Representatives, to each Senator and Representative from California in the Congress of the United States, and to the directors of the National Institutes of Health and the National Cancer Institute.

RESOLUTION CHAPTER 25

Senate Concurrent Resolution No. 67—Relative to César Chávez Day.

[Filed with Secretary of State April 10, 2002.]

WHEREAS, On March 31, 1927, a true hero named César Estrada Chávez was born in Yuma, Arizona to Librado and Juana Chávez and became the second oldest in a family of five children. César Chávez lived his life dedicated to improving the plight of farmworkers through struggle, sacrifice, and self-denial. He founded and led the first successful farmworkers' union in United States history. He stood for dignity and justice for farmworkers. Today, he remains a symbol of hope to all Californians who find hope and peace in justice; and

WHEREAS, In the 1930's, during the Great Depression, César Chávez' father lost his small farming business and the family went broke. The family became migrant workers and joined some 30,000 workers who followed the crops from Arizona into southern California, then up the length of the Central Valley and back again picking everything from peas to cotton. They lived in tents and other makeshift housing that often lacked a bathroom, electricity, or running water. Schooling for Chávez was irregular and haphazard. He attended some 30 different schools, often encountered discrimination, and was punished for speaking Spanish; and

WHEREAS, After graduation from the eighth grade, César Chávez was forced to quit school and take to the fields in order to help support his family. In 1944, at the age of 17, César Chávez joined the Navy and served in World War II. After he completed his tour of duty, César Chávez returned to California and married Helen Fabela, a woman who shared his dedication to the cause of the farmworker. They lived in San Jose in a tough Mexican neighborhood called ''Sal Si Puedes'' which translated to ''get out if you can,'' and together raised eight children; and

WHEREAS, As a farmworker, César Chávez experienced firsthand the injustice of working long hours with little pay. Instilled with a sense of justice passed down from his mother, César Chávez made a decision to speak up and fight for change. He took part in his first strike in protest of low wages and poor working conditions for farmworkers. Although initially unsuccessful, his participation in that first strike was to mark the beginning of a long career in which he fought for improved working and living conditions for farmworkers; and

WHEREAS, In 1952, César Chávez met Fred Ross who was with a group called the Community Services Organization (CSO). Struck by César Chávez' engaging personality and leadership qualities, Ross tapped César Chávez to head voter registration efforts where he successfully registered 4,000 voters. The following year, he led organizational efforts to establish CSO offices in every major barrio. César Chávez eventually spent 10 years with CSO, and became general director in 1958. During this time, services were expanded to include citizenship classes, helping members secure drivers' licenses, assistance in filling out applications for aid, and securing legal counsel; and

WHEREAS, In 1962, César Chávez resigned his position with the CSO to embark on a bold new undertaking to form a farmworkers' union. He was joined by the great Dolores Huerta, and together they became the architects of the National Farm Worker's Union, the forerunner to the present United Farm Workers (UFW); and

WHEREAS, In 1965, César Chávez led a strike of California grapepickers to demand higher wages and urged all Americans to boycott table grapes as a show of support. The strike included a 340-mile march from Delano to Sacramento in 1966 in which thousands of farmworkers and supporters marched in solidarity. The farmworkers and supporters carried banners with the black eagle with the words ''HUELGA'' (strike) and ''VIVA LA CAUSA'' (long live our cause); and

WHEREAS, César Chávez preached nonviolence to the strikers even as they were physically abused by many of those opposed to the grape boycott. In 1968, he began a Ghandi-like fast to call attention to the migrant workers' cause. Although his dramatic act did little to solve the immediate problem, it increased public awareness of the conditions under which farmworkers labored. In 1973, the UFW organized a strike for higher wages from lettuce growers, and, after many battles, an agreement was finally reached in 1977 that gave the UFW the sole right to organize farmworkers; and

WHEREAS, During the 1980's, César Chávez led the effort to call attention to the health problems of farmworkers caused by the use of certain pesticides on crops; and

WHEREAS, On April 23, 1993, César Estrada Chávez died peacefully in his sleep in San Luis, Arizona. During his funeral, Cardinal Roger M. Mahoney, who celebrated the funeral mass, called César Chávez ''a special prophet for the worlds' farmworkers''; and

WHEREAS, Many declared that the UFW would die without him, but on César Chávez' birthday, March 31, 1994, under the leadership of his son-in-law, Arturo Rodriquez, the UFW marched 343 miles from Delano to Sacramento, echoing César Chávez' historic 1966 march, and demonstrated that the UFW still worked for farmworkers; and

WHEREAS, In 1990, Mexican President Salinas de Gortari awarded César Chávez the ''El Aguila Azteca'' (the Aztec Eagle), Mexico's highest award presented to people of Mexican heritage who have made major contributions outside of Mexico. He also became the second Mexican American to receive the Presidential Medal of Freedom, the highest civilian honor in the United States, which was presented posthumously to his wife, Helen Chávez, and her children on August 8, 1994, by President Clinton; and

WHEREAS, In 1994, César Chávez' family and the officers of the UFW created the César E. Chávez Foundation to inspire current and

future generations by promoting the ideals of César Chávez' life, work, and vision. Communities throughout California and the United States have honored the memory of César Chávez by naming schools, parks, children's centers, streets, and other public works after the leader; and

WHEREAS, César Chávez led by example, giving of himself so that he might help others. His relentless pursuit of the belief that the American dream should be available to all Americans, regardless of race or origin of birth, stands as a monument to our free society. His life and work is not only an inspiration to Latinos, but to working Americans of all nationalities. His legacy lives on in the improved working and living conditions of hundreds of thousands of Californians and their families; and

WHEREAS, In the year 2000, the Legislature enacted Senate Bill No. 984 (Chapter 213 of the Statutes of 2000) to create an annual state holiday on César Chávez' birthday, March 31; this holiday provides all Californians the opportunity to learn from César Chávez' life and provides schoolchildren the opportunity to learn through community service; and

WHEREAS, The State Board of Education on Wednesday, February 6, 2002, adopted a model curriculum on the life and work of César Chávez, fulfilling a key provision of Chapter 213 of the Statutes of 2000, that also includes topics on pesticides, immigration, and agriculture's role in the economy; now, therefore, be it

Resolved by the Senate of the State of California, the Assembly thereof concurring, That the Legislature recognizes March 31 as the anniversary of the birth of César Chávez and calls upon all Californians to participate in appropriate observances to remember César Chávez as a symbol of hope and justice to all citizens; and be it further

Resolved, That the Secretary of the Senate transmit copies of this resolution to the author for appropriate distribution.

RESOLUTION CHAPTER 26

Senate Concurrent Resolution No. 72—Relative to Women's History Month.

[Filed with Secretary of State April 10, 2002.]

WHEREAS, American women of every culture, class, and ethnic background have participated in the founding and building of our nation, have made historic contributions to the growth and strength of our nation, and have played a critical role in shaping the economic, cultural, and social fabric of our society, not in the least of ways through their

participation in the labor force, working both inside and outside the home; and

WHEREAS, Women have been leaders in every movement for social change, including their own movement for suffrage and equal rights, the fight for emancipation, the struggle to organize labor unions, and the civil rights movement, as well as leading the call for peace and organizing to preserve the environment; and

WHEREAS, In light of these efforts and the achievements of all American women, we take this opportunity to honor women and their contribution to the development of our society and our world; and

WHEREAS, The celebration of Women's History Month will provide an opportunity for schools and communities to focus attention on the historical role and accomplishments of the women of California and the United States, and for students, in particular, to benefit from an awareness of these contributions; and

WHEREAS, Women's History Month will include International Women's Day on March 8, originally proclaimed in 1910 to recognize and commemorate the valuable contributions women have made to the labor movement in improving working conditions, and thus bettering people's lives; and

WHEREAS, Women's History Month will be not only a call to acknowledge the outstanding American women whose names we know, but also a call to pay homage to the many women who have anonymously shaped our collective past; and

WHEREAS, The observance of Women's History Week was initiated by the Sonoma County Commission on the Status of Women in 1977, a celebration that evolved into Women's History Month, commemorated throughout the nation by schools, historians, and community groups; and

WHEREAS, The achievements of women who have gone before us will enable contemporary women and men to create tomorrow's history by working toward an end to physical and sexual violence against women, discrimination and harassment in employment, and the relegation to poverty status of many women, and by advocating for the full participation of women in the economic and political arena, the provision of adequate child care, respect for those who choose homemaking and motherhood as their career, and equal access to all of the opportunities this great nation has to offer; and

WHEREAS, The story of the women's rights movement deserves telling because of the significance and scope of women's role in making history and shaping the cultural and societal makeup of California and the United States, and because it is a rich part of our common heritage, a story of gallantry and devotion to the belief that the opportunity for

complete human dignity should not be denied to one-half of the state and the nation; and

WHEREAS, The National Women's History Project has adopted ''Women Sustaining the American Spirit'' as the 2002 theme for Women's History Month, showcasing the diverse and interlocking stories of women who have created and affirmed the American spirit. The 2002 theme will help deliver the message of who American women are and what they have accomplished. The theme will also help focus on the rich and complex ways women have created the American spirit. The National Women's History Project has selected six women to honor and showcase. The 2002 honorees include:

Alice Coachman—Breaking through the barriers of race and sex, Alice Coachman became the first African American woman to win an Olympic gold medal in track and field when she broke the Olympic record in the high jump.

Dorothy Height—A passionate leader in the struggle for equality and human rights for all people, Dorothy Height has worked as President of the National Council of Negro Women (NCNW) for over 40 years.

Dolores Huerta—To help create better working conditions for migrant farm workers, Dolores Huerta, along with Cesar Chavez, cofounded and led the United Farm Workers Union.

Gerda Lerner—Escaping Nazi terrorism when she was 17 years old, Gerda Lerner became the foremost pioneer in defining the scope and importance of the field of women's history, and in 1981 was the first woman in 50 years to be elected President of the Organization of American Historians.

Congresswoman Patsy T. Mink—Knowing the importance of challenging stereotypes, Patsy Mink, the first Asian American woman elected to the United States House of Representatives, played a key role in the enactment of Title IX, which is dramatically expanding the opportunities for women in education.

Mary Louise Defender Wilson—Celebrating and keeping alive the spirit of the Dakotah/Hidatsa people through storytelling, Mary Louise Defender Wilson's work serves as an essential cultural bridge as America moves into the 21st century; now, therefore, be it

Resolved by the Senate of the State of California, the Assembly thereof concurring, That the Legislature of the State of California takes pleasure in joining the California Commission on the Status of Women and the National Women's History Project in honoring the contributions of women, and proclaims the month of March 2002 as Women's History Month; and be it further

Resolved, That the Legislature of the State of California urges all Californians to join in the celebration of International Women's Day on March 8, 2002; and be it further

Resolved, That the Secretary of the Senate transmit copies of this resolution to the Chair of the California Commission on the Status of Women, and the National Women's History Project, for distribution to appropriate organizations.

RESOLUTION CHAPTER 27

Assembly Concurrent Resolution No. 132—Relative to Law Enforcement Appreciation Week.

[Filed with Secretary of State April 15, 2002.]

WHEREAS, Public safety for the citizens of this state is of the utmost importance; and

WHEREAS, Law enforcement officers of this state are on the front lines daily, risking their lives to ensure that each citizen can live in a safe and secure environment; and

WHEREAS, Law enforcement officers work in partnership with their community to protect life and property, solve neighborhood problems, and enhance quality of life in this state; and

WHEREAS, Law enforcement officers bear the public trust and dedicate themselves to the protection of the safety and rights of the citizens of this state; and

WHEREAS, The United States Congress has designated the week in which May 15 falls as "National Police Week" to honor all officers who have given the ultimate sacrifice while in the line of duty; and

WHEREAS, Ceremonies will be held in Sacramento in conjunction with National Police Week and Law Enforcement Appreciation Week, acknowledging the sacrifices and dedication of our local law enforcement professionals; and

WHEREAS, Law enforcement officers and their families and friends encourage the community to participate in acknowledging the sacrifices of the brave men and women who are entrusted with the public safety by attending these weeklong events starting with Sunday, April 28, 2002, and ending with a memorial service on Saturday, May 4, 2002, honoring the memory of California officers killed in the line of duty; now, therefore, be it

Resolved by the Assembly of the State of California, the Senate thereof concurring, That the Legislature does hereby proclaim Sunday, April 28, 2002, through Saturday, May 4, 2002, as Law Enforcement Appreciation Week in California, and encourages all Californians to join in this observance to commend our law enforcement officers for their

professionalism and commitment to the citizens of California; and be it further

Resolved, That the Chief Clerk of the Assembly prepare and transmit a copy of this resolution to the Governor.

RESOLUTION CHAPTER 28

Assembly Concurrent Resolution No. 166—Relative to Work Zone Awareness Week.

[Filed with Secretary of State April 15, 2002.]

WHEREAS, Accidents in highway work zones resulted in 1,093 deaths nationwide in 2000; and

WHEREAS, Workers in work zones and motorists traveling through work zones suffer injury or death as a result of accidents in work zones; and

WHEREAS, Employees and private sector citizens of the State of California are among those who must regularly work within the public right-of-way and in close proximity to traffic while performing their responsibilities, including the maintenance of streets, the maintenance and repair of water and sewer lines, the maintenance and replacement of traffic signs and signals, the application of pavement markings, and the maintenance and landscaping of street medians; and

WHEREAS, To increase public awareness of the need for greater caution and care by motorists while driving through work zones and to promote safe practices by workers while working in work zones, the Federal Highway Administration, the American Traffic Safety Services Association, and the American Association of State Highway and Transportation Officials have jointly declared the second week of April as ''National Work Zone Safety Awareness Week''; and

WHEREAS, The State of California desires to promote the safety of its employees and to encourage motorists traveling in and through the state to exercise caution and care when encountering a work zone; now, therefore, be it

Resolved by the Assembly of the State of California, the Senate thereof concurring, That the second week of April, 2002, and the second week of April annually thereafter, be designated as Work Zone Awareness Week; and be it further

Resolved, That the Chief Clerk of the Assembly transmit copies of this resolution to the author for appropriate distribution.

RESOLUTION CHAPTER 29

Assembly Joint Resolution No. 27—Relative to social health maintenance organizations.

[Filed with Secretary of State April 15, 2002.]

WHEREAS, Government spending for nursing homes, home health care, and prescription drugs is rising at a rate of almost 10 percent a year, faster than the overall medical health care inflation rate of 4.3 percent for November 2000; and

WHEREAS, The growth of long-term care expenditures, estimated at 2.6 percent nationally on an annual basis coupled with the growing number of older Americans, will significantly increase costs to the nation's Medicaid and Medicare programs; and

WHEREAS, Innovative and cost-effective models of care are needed to address the needs of aging Americans; and

WHEREAS, In the federal Deficit Reduction Act of 1984, Congress mandated the social health maintenance organization (social HMO) demonstration, which has since benefited over 125,000 individuals; and

WHEREAS, The social HMO demonstration has been reinforced and expanded by Congress in 1987, 1990, 1993, 1997, and 1999; and

WHEREAS, The social HMO is a community-based approach to integrating acute and long-term care for older Americans; and

WHEREAS, The primary purpose of the social HMO is to finance, provide, and coordinate additional services as an extension of benefits covered by Medicare and Medicaid, thereby helping frail seniors live safely in their own homes and avoid costly skilled nursing home placement; and

WHEREAS, The social HMO targets individuals at risk for nursing home placement and chronic illnesses; and

WHEREAS, The social HMO supplements the standard benefits required of Medicare+Choice with essential benefits, including geriatric-specific case management, adult day care, personal care, homemaker services, nutrition support, and medication management; and

WHEREAS, Sixty-eight percent of nursing home costs are financed by Medicaid, avoiding or delaying longer nursing home stays and directly saving federal and state funds, by reducing Medicaid nursing home expenditures; and

WHEREAS, California has 3.3 million residents aged 65 years and older, and is home to the largest elderly population in the country; and

WHEREAS, The number of Californians aged 60 years and older is projected to grow 154 percent over the next 40 years; and

WHEREAS, The fastest growing population group in California is aged 85 years and older; and

WHEREAS, Only one social HMO exists in California, serving over 48,000 seniors, of which 10,300 are eligible for nursing home placement; and

WHEREAS, The Senior Care Action Network (SCAN), the only social HMO in California, has been able to maintain these skilled nursing home-certifiable seniors in their own homes by providing home and community-based programs and services; and

WHEREAS, SCAN members are 53 percent less likely than their counterparts in other health care programs to have a long nursing home stay; and

WHEREAS, SCAN offers financial savings and security to older adults, their families, and taxpayers by alleviating anxiety about exhausting personal savings for long-term care by providing a benefit package that includes in-home services; and

WHEREAS, The permanency of the social HMO as a benefit option under the Medicare+Choice program will allow organizations like SCAN to provide comprehensive services to seniors anywhere in the nation; and

WHEREAS, The social HMO will serve as a national model of cost-effective care that provides older Americans with greater health, independence, and dignity ; now, therefore, be it

Resolved by the Assembly and Senate of the State of California, jointly, That the Legislature of the State of California hereby urges the President and Congress of the United States, the federal Department of Health and Human Services, and the Centers for Medicare and Medicaid Services to do all of the following:

(a) Affirm the intent of the social HMO program to provide services for frail and chronically ill seniors.

(b) Fully support the transition of the social HMO demonstration into a permanent benefit option as part of Medicare+Choice.

(c) Include Medicaid beneficiaries in the social HMO Medicare+Choice option.

(d) Allow the social HMO option to offer comprehensive services in addition to fundamental Medicare benefits.

(e) Approve and support a payment methodology needed for the advanced care for the nation's frail and chronically ill elderly; and be it further

Resolved, That the Chief Clerk of the Assembly transmit copies of this resolution to the President and Vice President of the United States, the Speaker of the House of Representatives, the United States Secretary of Health and Human Services, the Administrator of the Centers for

Medicare and Medicaid Services, and to each Senator and Representative from California in the Congress of the United States.

RESOLUTION CHAPTER 30

Senate Concurrent Resolution No. 56—Relative to POW Recognition Day.

[Filed with Secretary of State April 15, 2002.]

WHEREAS, Men and women have long answered our nation's call to duty and undertaken their mission as members of the United States Armed Forces; and

WHEREAS, Our military personnel have gone to battle in countries far and near to defend the ramparts of liberty and resist the agents of tyranny; and

WHEREAS, Hostile forces throughout the world continue to subvert the political and economic freedom for which American soldiers have sacrificed their lives; and

WHEREAS, Since World War I, there have been some 142,257 Americans captured and interned under deplorable conditions; and

WHEREAS, Most of our military personnel have returned home as heroes and proud veterans, but sadly another 92,457 other Americans were lost in combat, and their remains never recovered; and

WHEREAS, On April 9, 1865, General Robert E. Lee surrendered to General Ulysses S. Grant in Appomattox Court House, Virginia; and

WHEREAS, General King, the American Army General who surrendered the largest number of military fighting personnel ever surrendered at one time to an enemy force, was a student of history who knew that April 9 marked the surrender at Appomattox, and who chose April 9 of 1942, to surrender; and

WHEREAS, The surrender of American and Filipino troops by General King on April 9, 1942, on the Bataan Peninsula led to the infamous Bataan Death March; and

WHEREAS, April 9, 2002, marks the 60th anniversary of the surrender on the Bataan Peninsula; and

WHEREAS, The POW remembrance flag flies over the California Capitol daily; and

WHEREAS, Search teams continually span the globe to locate deceased fighting men so that positive identification can be made and loved ones notified; and

WHEREAS, The National POW Museum located in Andersonville, Georgia, honors all prisoners of war, and is a constant reminder of those who made the ultimate sacrifice for their country; and

WHEREAS, April 9 was chosen by Congress to be the national day for honoring prisoners of war; and

WHEREAS, Each year, citizens throughout America join in observances to honor and recognize former American prisoners of war, and to remember those individuals still unaccounted for, so that we may rededicate ourselves to finding a resolution to their status that will allow their families to have the peace they deserve; now, therefore, be it

Resolved by the Senate of the State of California, the Assembly thereof concurring, That the Legislature hereby designates April 9, 2002, as POW Recognition Day in California; and be it further

Resolved, That the Secretary of the Senate transmit copies of this resolution to the author for appropriate distribution.

RESOLUTION CHAPTER 31

Senate Joint Resolution No. 36—Relative to highway funding.

[Filed with Secretary of State April 15, 2002.]

WHEREAS, The proposed federal budget for the 2003 fiscal year beginning October 1, 2003, would reduce federal highway funding by eight billion six hundred million dollars ($8,600,000,000) from the current funding level, a reduction of nearly 30 percent; and

WHEREAS, The reduced highway funding would adversely affect California to the greatest extent and result in a funding reduction to the state in excess of six hundred million dollars ($600,000,000), with similar, proportionate funding reductions in other states; and

WHEREAS, The projected loss of federal highway funding to California is equivalent to 25 percent of the state's anticipated and budgeted federal allocation for this purpose; and

WHEREAS, The precipitous reduction in funding would equate to a loss of 144,000 jobs nationwide and 20,000 jobs in California at a time when the states and the nation are seeking ways to stimulate economic activity and counter the effects of existing job losses and sluggish economic conditions; and

WHEREAS, A dramatically reduced, federal transportation budget would delay the completion of highway projects and programs across the country, thereby hampering efforts to provide critically needed transportation facilities, improve efficiency, reduce congestion, and increase safety to the traveling public; and

WHEREAS, The federal Highway Trust Fund has an unobligated balance of eighteen billion five hundred million dollars ($18,500,000,000) which could be used to remedy any actual or temporary decline in federal transportation revenues and to maintain highway funding at levels anticipated in the Transportation Equity Act for the Twenty-First Century (TEA-21); and

WHEREAS, Members of the House Transportation and Infrastructure Committee and the Senate Environment and Public Works Committee have introduced legislation to restore federal highway funding for the 2003 fiscal year and the Transportation and Infrastructure Committee has asked the General Accounting Office to reexamine the assumptions and calculations underlying the proposed federal budget reduction; now, therefore, be it

Resolved by the Senate and Assembly of the State of California, jointly, That the Legislature supports the efforts of the House of Representatives and the United States Senate to verify the accuracy of federal transportation revenue forecasts, and more importantly, to restore federal highway program funding levels to not less than those anticipated by the states and in the Transportation Equity Act for the Twenty-First Century (TEA-21) provisions for 2003, including the use of funds in the Highway Trust Fund to the extent necessary to maintain present allocation levels and obligational authority; and be it further

Resolved, That the Secretary of the Senate transmit copies of this resolution to the Members of the House of Representatives and the United States Senate.

RESOLUTION CHAPTER 32

Assembly Concurrent Resolution No. 111—Relative to the California Highway Patrol Officer James J. Schumacher, Jr., Memorial Highway.

[Filed with Secretary of State April 22, 2002.]

WHEREAS, State Traffic Officer James John Schumacher, Jr., of the California Highway Patrol, was killed while in the line of duty, early on the morning of June 13, 1981, on Highway 99 approximately four miles south of Merced; and

WHEREAS, Officer Schumacher had just finished writing a speeding ticket and was standing approximately four feet off the highway while obtaining the ticketed driver's signature and warning the ticketed driver to be careful pulling out onto the highway, when he was struck by another car driven at a high rate of speed by a driver who had fallen asleep at the wheel; and

WHEREAS, Officer Schumacher died instantly from massive injuries to his head and body; and

WHEREAS, Officer Schumacher was a graduate of Luther Burbank High School in Sacramento, before attending Golden West College and then serving in the United States Army, where he achieved the rank of Sergeant; and

WHEREAS, Officer Schumacher graduated from the Academy and was appointed to the California Highway Patrol on May 19, 1969; and

WHEREAS, Officer Schumacher was an admired and respected 12-year veteran of the California Highway Patrol, having served in the South Los Angeles, Westminster, and Merced areas; and

WHEREAS, Officer Schumacher had many close friends in the California Highway Patrol, who were shocked and saddened by the loss of their fellow officer, a tragedy made worse by the theft of Officer Schumacher's badge from the scene of the accident by a bystander—it being the tradition of the California Highway Patrol since its inception, to memorialize a fallen officer by presenting his or her badge to the officer's family; and

WHEREAS, Officer Schumacher was only 33 years of age at the time of his death and was survived by his wife, Roberta, and their sons, James, then aged 9, and Andrew, then aged 7, his parents, three sisters, and two brothers, one of whom was a fellow officer in the California Highway Patrol; and

WHEREAS, Officer Schumacher died only five miles north from where California Highway Patrol Officer Al Johnson died, when he was struck by a drunk driver while writing out a ticket, in August of 1972; and

WHEREAS, This tragic accident continues to live in the memory of the law enforcement community, local residents of Merced County, and citizens throughout the state; and

WHEREAS, It is appropriate that the sacrifice of this young man, killed in the line of duty, be remembered on a highway memorializing his dedication to public service; and

WHEREAS, It would be a fitting tribute to Officer Schumacher to name the portion of State Highway Route 99, between Athlone Road and Worden Avenue, as the ''CHP Officer James J. Schumacher, Jr., Memorial Highway''; and

WHEREAS, This memorial highway will continue to remind us of the sacrifices California Highway Patrol and other peace officers make on a daily basis; now, therefore, be it

Resolved by the Assembly of the State of California, the Senate thereof concurring, That the Legislature hereby dedicates that portion of State Highway Route 99, between Athlone Road and Worden Avenue, in

Merced County, to the memory of California Highway Patrol Officer James J. Schumacher, Jr.; and be it further

Resolved, That State Highway Route 99, between Athlone Road and Worden Avenue, in Merced County, be officially dedicated the ''CHP Officer James J. Schumacher, Jr., Memorial Highway''; and be it further

Resolved, That the Department of Transportation is requested to determine the cost of appropriate plaques and markers, consistent with the signing requirements for the state highway system, showing this special designation, and, upon receiving donations from nonstate sources sufficient to cover the cost, to erect those plaques and markers; and be it further

Resolved, That the Chief Clerk of the Assembly transmit copies of this resolution to the Department of Transportation and to the author for appropriate distribution.

RESOLUTION CHAPTER 33

Assembly Concurrent Resolution No. 127—Relative to September 11, 2001.

[Filed with Secretary of State April 22, 2002.]

WHEREAS, On September 11, 2001, terrorists hijacked four separate flights all bound for California, and carrying 266 people; and

WHEREAS, All four flights crashed with no survivors; and

WHEREAS, These acts of terrorism caused the destruction of the two prominent World Trade Center towers, nearby buildings, a portion of the Pentagon building, and four airline jets, and the loss of innocent American lives and countless injuries to many others; and

WHEREAS, More than 3,000 people died in the September 11 attacks in New York, Washington DC, and Pennsylvania, including people from more than 60 countries; and

WHEREAS, The scale of destruction and loss of life is unimaginable and horrific, and all Californians join with the American public in pouring out their hearts in grief and sympathy for the family and friends of those who have perished or suffered injuries in the profound tragedy; and

WHEREAS, The Legislature salutes and remembers the hundreds of heroic men and women of the police and fire departments, the paramedics, and medical personnel at the disaster sites, who put their personal safety at risk and lost their lives or were seriously injured in their courageous efforts to protect and serve their fellow citizens; and

WHEREAS, The Legislature recognizes the support and acts of service performed by Californians, including sending letters, signing banners, donating blood, contributing money, offering food, providing supplies, and grieving as a diverse, yet united nation; and

WHEREAS, It is fitting at this point in history for all Americans to remind themselves that the United States is a nation of healing, hope, and resilience; now, therefore, be it

Resolved by the Assembly of the State of California, the Senate thereof concurring, That the Legislature of the State of California recognizes September 11 of each year as a Day of Remembrance and Service, and calls upon all Californians to participate in appropriate observances to remember those who lost their lives in the terrorist attacks of September 11, 2001, as a symbol of our love for them, their families, and our own communities, cities, and nation; and be it further

Resolved, That the Legislature encourages freedom-loving Californians to honor the memory of those who died by observing September 11 with an act of service for fellow Californians, whether that act is donating blood, visiting a nursing or veterans' home, volunteering at a children's hospital, mentoring neighborhood students, donating clothes to a homeless shelter, or some other act of giving; and be it further

Resolved, That California, firm in purpose and direct in its response, will thereby help our neighbors in time of need, work together for peace, and safeguard our legacy of freedom; and be it further

Resolved, That the Chief Clerk of the Assembly transmit copies of this resolution to the author for appropriate distribution.

RESOLUTION CHAPTER 34

Assembly Concurrent Resolution No. 186—Relative to Equal Pay Day.

[Filed with Secretary of State April 22, 2002.]

WHEREAS, The Equal Pay Act was signed into law in 1963 and prohibits unequal pay for equal or ''substantially equal'' work for men and women; and

WHEREAS, The Civil Rights Act of 1964 prohibits wage discrimination on the basis of race, color, sex, religion, or natural origin, even when jobs are not identical; and

WHEREAS, Nearly 40 years after the passage of the Equal Pay Act and Title VII of the Civil Rights Act of 1964, women and people of color continue to suffer the consequences of inequitable pay differentials; and

WHEREAS, According to statistics released in September of 2001 by the United States Census Bureau, year-round, full-time working women earned only 73 percent of the earnings of year-round, full-time working men, indicating no progress since 1999; and

WHEREAS, Although women's earnings have been slowly catching up to men's over time, the National Committee on Pay Equity tells us that this reduction in the wage gap has more to do with a fall in the rate of increase in men's earnings than with the rate of increase in women's earnings; and

WHEREAS, A vast majority of households depend on the wages of a working mother and workings families are often just one paycheck away from financial hardship; and

WHEREAS, Fair pay equity policies can be implemented simply and without undue costs; and

WHEREAS, Fair pay strengthens the security of families today and eases future retirement costs, while enhancing the American economy; now, therefore, be it

Resolved by the Assembly of the State of California, the Senate thereof concurring, That the Assembly and Senate of the State of California hereby declare April 16, 2002, to be ''Equal Pay Day'' and that the Assembly and Senate urge the citizens of the State of California to recognize the full value of women's skills and significant contributions to the labor force; and be it further

Resolved, That the Chief Clerk of the Assembly transmit copies of this resolution to the author for distribution as appropriate.

RESOLUTION CHAPTER 35

Senate Concurrent Resolution No. 59—Relative to Child Abuse Prevention Month.

[Filed with Secretary of State April 24, 2002.]

WHEREAS, Child abuse and neglect continue to pose a serious threat to our nation's children; and

WHEREAS, In 1996, more than 3,000,000 children were reported to child protective agencies in the United States as having suffered abuse and neglect; and

WHEREAS, It is estimated that for every three dollars spent on child abuse and neglect, at least six dollars are saved that might be spent on child welfare services, special education services, medical care, foster care, counseling, and the housing of juvenile offenders; and

WHEREAS, Child abuse and neglect is a community problem and finding solutions depends on the involvement of people throughout the community; and

WHEREAS, The first organized statewide Blue Ribbon Campaign was originated in Norfolk, Virginia, by the grandmother of Bubba Dickinson, a child who was murdered by his mother's abusive boyfriend; and

WHEREAS, In recent years, the National Committee to Prevent Child Abuse, the California chapter and other local affiliates, United States military bases, and other groups have organized Blue Ribbon Campaigns to increase public awareness of child abuse and to promote ways to prevent child abuse; and

WHEREAS, The National Committee to Prevent Child Abuse, in all its forms, has proclaimed April as National Child Abuse Prevention Month; and

WHEREAS, Blue ribbons are displayed to increase awareness of child abuse and as a strategy for Child Abuse Prevention Month; and

WHEREAS, This year's campaign is entitled ''The Little Things You Can Do To Prevent Child Abuse and Neglect''; and

WHEREAS, The flexibility of this program offers numerous opportunities to be innovative and to create partnerships within business, professional, and community organizations; and

WHEREAS, The Senate and the Assembly encourage the community to work together for youth-serving prevention programs; now, therefore, be it

Resolved by the Senate of the State of California, the Assembly thereof concurring, That the Legislature does hereby acknowledge the month of April 2002, as Child Abuse Prevention Month and encourage the people of the State of California to support child abuse prevention activities in their communities and schools during that month and throughout the year; and be it further

Resolved, That the Secretary of the Senate transmit copies of this resolution to the author for appropriate distribution.

RESOLUTION CHAPTER 36

Senate Concurrent Resolution No. 63—Relative to Random Acts of Kindness Week.

[Filed with Secretary of State April 24, 2002.]

WHEREAS, Random acts of kindness are the tender and compassionate things that we do for no reason except for the joy of doing the kind act itself; and

WHEREAS, In 1982, an individual named Ann Herbert penned a very special phrase, ''Practice random acts of kindness and senseless acts of beauty''; and

WHEREAS, ''Random Acts of Kindness Week'' is a way to counteract random acts of violence; and

WHEREAS, Since the first Random Acts of Kindness Week in February 1995, the nonprofit Random Acts of Kindness Foundation has been formed, which orchestrates the annual awareness campaign each February; and

WHEREAS, Random acts of kindness by individuals contribute to the good health of our community and diminish the effect of diseases and disorders, both psychological and physical; and

WHEREAS, The reduction in stress in our daily lives is vital to improving our health and helping others through random acts of kindness can reverse feelings of depression, hostility, and isolation; now, therefore, be it

Resolved by the Senate of the State of California, the Assembly thereof concurring, That the week of February 11 through February 17, 2002, shall be recognized as Random Acts of Kindness Week, and that the public be urged to observe this week with appropriate individual or group activities; and be it further

Resolved, That the Secretary of the Senate transmit copies of this resolution to the author for appropriate distribution.

RESOLUTION CHAPTER 37

Assembly Concurrent Resolution No. 131—Relative to California Peace Officers' Memorial Day.

[Filed with Secretary of State April 26, 2002.]

WHEREAS, May 3, 2002, is California Peace Officers' Memorial Day, a day Californians observe in commemoration of those noble officers who have tragically sacrificed their lives in the line of duty; and

WHEREAS, Although California citizens are indebted to our California peace officers each day of the week, we make particular note of their bravery and dedication and we share in their losses on California Peace Officers' Memorial Day; and

WHEREAS, California peace officers have a job second in importance to none, and it is a job that is as difficult and hazardous as it is important; and

WHEREAS, The peace officers of California, have worked dutifully and selflessly on behalf of the people of this great state, regardless of the peril or hazard to themselves; and

WHEREAS, By the enforcement of our laws, these same officers have safeguarded the lives and property of the citizens of California and have given their full measure to ensure those citizens the right to be free from crime and violence; and

WHEREAS, Special ceremonies and observances on behalf of California peace officers provide all Californians with the opportunity to appreciate the heroic men and women who have dedicated their lives to preserving public safety; now, therefore, be it

Resolved by the Assembly of the State of California, the Senate thereof concurring, That the Members designate Friday, May 3, 2002, as California Peace Officers' Memorial Day, and urge all Californians to remember those individuals who gave their lives for our safety and express appreciation to those who continue to dedicate themselves to making California a safer place in which to live and raise our families.

RESOLUTION CHAPTER 38

Assembly Concurrent Resolution No. 151—Relative to California chaplains.

[Filed with Secretary of State April 26, 2002.]

WHEREAS, Chaplains from northern California were among the many men and women nationwide who offered their services at Ground Zero after the terrorist attacks on the World Trade Center in New York City; and

WHEREAS, At least five chaplains from northern California have spent thousands of hours at the site of this tragedy, providing physical, emotional, and primarily spiritual support to the recovery operation's crew members, often working at night so that local chaplains could go home, shower, and spend time with their families; and

WHEREAS, In addition to working with recovery workers at Ground Zero, these chaplains have conducted crisis counseling debriefing at local businesses near Ground Zero and for faculty and staff at the Borough of Manhattan Community College they also have worked with local churches whose parishioners died, and conducted training sessions on grief and bereavement; and

WHEREAS, These California chaplains also have provided service in connection with the bombing of the federal building in Oklahoma City; the flooding in Killeen, Texas; the shooting at Olivehurst School in Marysville, California; the Loma Prieta earthquake; the schoolyard shootings in Stockton, California; and at other disasters in their local communities; and

WHEREAS, These chaplains include Raymond Giunta of Carmichael, California; Jeff Jones of Sacramento, California; Ward Cockerton, the fire chaplain for the Sacramento Area Fire Chaplaincy; Jim Huey of San Jose, California; Ryan Wright of Santa Clara, California; and Dan Gibson from the Office of Emergency Services in Nevada County, California; now, therefore be it

Resolved by the Assembly of the State of California, the Senate concurring, That the California Legislature recognizes these California chaplains for their outstanding service, commitment, and dedication to helping others at Ground Zero and at the scene of other disasters; and be it further

Resolved, That the Chief Clerk of the Assembly transmit copies of this resolution to the author for distribution.

RESOLUTION CHAPTER 39

Assembly Joint Resolution No. 44—Relative to the Armenian Genocide.

[Filed with Secretary of State April 26, 2002.]

WHEREAS, One and one-half million men, women, and children of Armenian descent were victims of the brutal genocide perpetrated by the Ottoman Empire from 1915 to 1923; and

WHEREAS, The Armenian Genocide and massacre of the Armenian people have been recognized as an attempt to eliminate all traces of a thriving and noble civilization over 3,000 years old; and

WHEREAS, To this day revisionists still inexplicably deny the existence of these horrific events; and

WHEREAS, By consistently remembering and openly condemning the atrocities committed against the Armenians, California residents demonstrate their sensitivity to the need for constant vigilance to prevent similar atrocities in the future; and

WHEREAS, Recognition of the 87th anniversary of this genocide is crucial to preventing the repetition of future genocides and educating people about the atrocities connected to these tragic events; and

WHEREAS, Armenia is now a free and independent republic, having embraced democracy following the dissolution of the Soviet Union; and

WHEREAS, California is home to the largest population of Armenians in the United States, and those citizens have enriched our state through their leadership in the fields of business, agriculture, academia, medicine, government, and the arts and are proud and patriotic practitioners of American citizenship; now, therefore, be it

Resolved by the Assembly and Senate of the State of California, jointly, That the Legislature of the State of California hereby designates April 24, 2002, as ''California Day of Remembrance for the Armenian Genocide of 1915–1923''; and be it further

Resolved, That the State of California respectfully memorializes the Congress of the United States to likewise act to commemorate the Armenian Genocide; and be it further

Resolved, That the Chief Clerk of the Assembly transmit copies of this resolution to the President of the United States, Members of the United States Congress, the Governor, and Armenian churches and commemorative organizations in California.

RESOLUTION CHAPTER 40

Senate Concurrent Resolution No. 53—Relative to California Hispanic Heritage Month.

[Filed with Secretary of State April 26, 2002.]

WHEREAS, President Lyndon B. Johnson first proclaimed National Hispanic Heritage Week on September 17, 1968, in recognition of the contributions of Hispanic Americans to American culture and history; and

WHEREAS, The original weeklong commemoration was changed by Public Law No. 100-402 to National Hispanic Heritage Month on January 1, 1989; and

WHEREAS, The objectives of National Hispanic Heritage Month are to create a greater awareness of the contributions of Hispanic Americans to American culture, to illustrate the diversity of the Hispanic American community, and to encourage a greater curiosity within young people about the rich history and cultural heritage of Hispanic Americans; and

WHEREAS, Hispanic influence is evident in American culture whether it is in the area of music, arts, sciences, food, humanities, or business and trade; and

WHEREAS, Hispanic Americans from the time of the Revolutionary War to the War on Terrorism subsequent to September 11, 2001, have

proudly served this country in the Armed Forces and during their course of service, 38 Hispanic Americans, including nine from California have been awarded the Congressional Medal of Honor, the highest honor conferred for military bravery and heroism above and beyond the call of duty; and

WHEREAS, There are nearly 11 million Hispanic Americans in California; and

WHEREAS, Hispanic Americans have contributed to the development and success of California by playing major roles in building this state through agriculture, medicine, science, entertainment, business, education, civil rights, politics, and sports; now, therefore, be it

Resolved by the Senate of the State of California, the Assembly thereof concurring, That the Legislature hereby proclaims September 15 to October 15, 2002, inclusive, as California Hispanic Heritage Month, and encourages all Californians to observe this event in communities throughout the state; and be it further

Resolved, That the Secretary of the Senate transmit copies of this resolution to the author for appropriate distribution.

RESOLUTION CHAPTER 41

Senate Concurrent Resolution No. 65—Relative to California Museum Month.

[Filed with Secretary of State April 26, 2002.]

WHEREAS, Museums significantly enhance the quality of life for California citizens; and

WHEREAS, California museums provide their communities with many services and activities that add to and enhance those provided by the public sector; and

WHEREAS, California is home to over 1,300 museums that serve every community and region throughout the state; and

WHEREAS, There is at least one museum in every county of the state serving a total of over 26 million visitors annually; and

WHEREAS, Museums do important work that helps the state meet its obligations to citizens in the field of education; and

WHEREAS, Museums contribute to formal and informal learning at every stage of life, from the education of children in preschool through secondary school to the continuing education of adults; and

WHEREAS, In 1998, 1.85 million school children participated in organized museum visits and programs in California museums, and 91.2

percent of California museums have had scheduled school visits or school programs; and

WHEREAS, Museums are a significant resource for in-service training of California teachers; and

WHEREAS, Museums act as a repository for California natural and cultural history, and are an important means of making the best of our society's art, science, history, and culture available to California citizens; and

WHEREAS, Museums contribute significantly to California's economic activity by providing a huge economic boost to their communities in attracting tourists and local visitors, all of whom create a demand for services; and

WHEREAS, California's museums are a major industry for the state; and

WHEREAS, Museums serve as a source of community pride in a state of rich diversity; and

WHEREAS, Museums are the part of a community that provides a common experience and a safe place that people from all backgrounds can share; and

WHEREAS, California's museums are one of the best bargains around, with half of the state's museums providing free admission to adults; and

WHEREAS, The California Association of Museums has served to bring important recognition of the month during which museums will celebrate the diversity of community services they provide by hosting an eclectic array of public programming during the month of May 2002; now, therefore, be it

Resolved by the Senate of the State of California, the Assembly thereof concurring, That the Legislature of the State of California hereby proclaims May 2002, as California Museum Month in recognition of the important role that museums have in the State of California; and be it further

Resolved, That the Secretary of the Senate transmit copies of this measure to the author for appropriate distribution.

RESOLUTION CHAPTER 42

Senate Concurrent Resolution No. 73—Relative to Sexual Assault Awareness Month.

[Filed with Secretary of State April 29, 2002.]

WHEREAS, The American Medical Association has stated that a ''woman is raped every 46 seconds in the United States'' and that sexual assault is a ''silent epidemic''; and

WHEREAS, In California, there were 9,785 forcible rapes reported in the year 2000; and

WHEREAS, It is estimated by the Bureau of Justice Statistics that over 70 percent of rapes are never reported to police; and

WHEREAS, Women, children, and men are all victims of sexual assault and it is estimated that one in three women, one in four girls, one in six boys, and one in 11 men will be victims at least once in their lifetimes; and

WHEREAS, Rape and sexual assault impacts women, children, and men of all racial, cultural, and economic backgrounds; and

WHEREAS, Women, children, and men suffer multiple types of sexual violence, including acquaintance rape, stranger rape, sexual assault by an intimate partner, gang rape, incest, stalking, serial rape, ritual abuse, sexual harassment, child sexual molestation, prostitution, and pornography; and

WHEREAS, In addition to the immediate physical and emotional costs, sexual assault may also have associated severe and long-lasting consequences of posttraumatic stress disorder, substance abuse, major depression, homelessness, eating disorders, and suicide; and

WHEREAS, The Centers for Disease Control and Prevention have identified sexual assault as a significant, costly, and preventable health issue; and

WHEREAS, Women, children, and men in our state have the right to be safe from sexual violence in their homes, at school, at work, and on the streets; and

WHEREAS, It is our responsibility to support rape survivors by treating them with dignity, compassion, and respect; and

WHEREAS, It is crucially important to hold perpetrators responsible for sexual attacks, and to prevent sexual violence at every opportunity; and

WHEREAS, A coalition of rape crisis centers, known as the California Coalition Against Sexual Assault, has emerged to directly confront this crisis with the cooperation of law enforcement agencies, churches, health care providers, and other helping professionals from California's diverse communities; and

WHEREAS, It is important to recognize the compassion and dedication of the individuals involved in this effort, applaud their commitment, and increase public understanding of this significant problem; and

WHEREAS, Rape Counseling Services throughout California serve a vital function for victims of sexual assault by providing crisis

intervention, prevention education, and staffing for 24-hour rape hot-lines, and by offering hospital and court advocacy; and

WHEREAS, Social workers are crucial to the welfare of victims of sexual assault in that they provide crisis counseling at the time of the assault, create preventative programming for all ages to raise awareness of sexual assault, provide therapy for trauma victims as well as assailants in private practice, clinics, hospitals, schools, and correctional facilities, and contribute to the writing of policies that result in funding for rape awareness and treatment, and for the rehabilitation of sexual offenders; and

WHEREAS, District attorneys have successfully tried and convicted several thousands of perpetrators of sexual assault; and

WHEREAS, The federal government, the State of California, and several private corporations and organizations provide essential funding for rape counseling service centers and domestic violence shelters; and

WHEREAS, The Department of Justice's DNA and Forensic Identification Data Base has proven an exceptional tool in prosecuting unsolved rape cases; and

WHEREAS, It is important to recognize the strength, courage, and challenges to the victims and survivors of sexual assault and their family and friends as they struggle to cope with the reality of sexual assault; and

WHEREAS, It is important to recognize that not all victims of sexual assault survive, either at the time of the assault or later, due to the horrific long-term trauma that sexual assault often inflicts upon victims; and

WHEREAS, There are rape prevention and education efforts underway throughout California to challenge the societal myths and behaviors that perpetuate rape and to engage communities in a common goal of ending sexual assault; now, therefore, be it

Resolved by the Senate of the State of California, the Assembly thereof concurring, That the Legislature hereby proclaims that, henceforth, the month of April shall be designated as Sexual Assault Awareness Month; and be it further

Resolved, That the Secretary of the Senate transmit copies of this resolution to the President of the United States, to the Governor, to the United States Director on Victims of Crime, and to each Senator and Representative from California in the Congress of the United States.

RESOLUTION CHAPTER 43

Assembly Concurrent Resolution No. 142—Relative to the Judge Harry Pregerson Interchange.

[Filed with Secretary of State May 3, 2002.]

WHEREAS, Judge Harry Pregerson was born in Los Angeles, California in 1923; and

WHEREAS, Judge Harry Pregerson received his Bachelor of Arts from the University of California, Los Angeles in 1947, and was awarded a Bachelor of Laws from the University of California, Berkeley, Boalt Hall School of Law in 1950; and

WHEREAS, Judge Harry Pregerson served his country as a United States Marine Corps First Lieutenant from 1944 to 1946 and was severely wounded in the battle of Okinawa in World War II; and

WHEREAS, Judge Harry Pregerson was an attorney in private practice from 1951 to 1965, was a judge of the Los Angeles Municipal Court from 1965 to 1966, was a judge of the Los Angeles Superior Court from 1966 to 1967, was appointed to the United States District Court for the Central District of California on December 7, 1967, and was appointed to the United States Court of Appeals for the Ninth Circuit on November 2, 1979; and

WHEREAS, Judge Harry Pregerson presided over the Century Freeway lawsuit for more than two decades starting in 1972, and kept control of the case for more than a dozen years after he was elevated to the appeals court even though he could have surrendered it to another judge; and

WHEREAS, Judge Harry Pregerson ensured the construction of nearly 5,000 affordable housing units to replace homes removed to make way for the Century Freeway and oversaw the housing program under a consent decree from 1972 to 1995; and

WHEREAS, Judge Harry Pregerson insisted that a major portion of the construction jobs involved in the building go to minorities and women and, when there were not enough minorities and women qualified for the jobs, he helped to create a construction apprenticeship program for them; and

WHEREAS, The Century Freeway Housing Program, now known as the Century Housing Corporation, a nonprofit organization, grew out of the settlement of the Century Freeway lawsuit presided over by Judge Harry Pregerson, and provided funds to acquire the Westwide Residence Hall which houses 500 formerly homeless veterans and is the largest housing and employment center for homeless veterans in the country; and

WHEREAS, The settlement of the Century Freeway lawsuit permitted construction of State Highway Route 105, known as the Century Freeway, which extends seventeen miles from Norwalk, California to the Los Angeles International Airport; and

WHEREAS, In 1988 Judge Harry Pregerson founded the Bell Homeless Shelter, of which one-third of the clients are veterans, at a federal supply center in southeast Los Angeles County; and

WHEREAS, In 1989, Judge Harry Pregerson partnered with charities, veterans groups, labor organizations, the federal General Services Administration, and then Los Angeles Mayor Tom Bradley to start the Westwood Transitional Village, which provided furnished apartments for homeless families, with preference given to veterans; and

WHEREAS, In 1994, Judge Harry Pregerson helped start the Salvation Army's Haven Program, which arranges housing and provides support services for homeless veterans; and

WHEREAS, Judge Harry Pregerson helped bring together judges, law enforcement, and county officials to create a ''homeless court,'' which can clear an offender's record of minor violations, providing an incentive for homeless individuals to complete a rehabilitation program and return to a productive life; and

WHEREAS, Judge Harry Pregerson is an active member of the Disabled American Veterans' organization; and

WHEREAS, Judge Harry Pregerson, at 77 years of age, is the oldest active judge on the Ninth Circuit Court of Appeals and since 1972 has been instrumental in creating organizations that provide housing, employment, and rehabilitation services for homeless veterans; now therefore, be it

Resolved by the Assembly of the State of California, the Senate thereof concurring, That the interchange where State Highway Route 105 connects with State Highway Route 110 be officially named the Judge Harry Pregerson Interchange; and be it further

Resolved, That the Department of Transportation is requested to determine the cost of appropriate plaques and markers, consistent with the signing requirements for the state highway system, showing this special designation, and upon receiving donations from nonstate sources sufficient to cover that cost, to erect those plaques and markers; and be it further

Resolved, That the Chief Clerk of the Assembly transmit copies of this resolution to the Department of Transportation and to the author for appropriate distribution.

RESOLUTION CHAPTER 44

Assembly Concurrent Resolution No. 152—Relative to Salvadoran Day.

[Filed with Secretary of State May 3, 2002.]

WHEREAS, The aftermath of 40 years of internal political turmoil forced hundreds of thousands of Salvadorans to flee El Salvador, seeking peace and security in a new country, the United States; and

WHEREAS, Salvadoran Americans constitute a significantly growing population in the nation, with more than 275,000 Salvadoran Americans making their home in California, with the majority residing in the County of Los Angeles; and

WHEREAS, The history of our nation and California is a rich and enduring tapestry woven with the threads of many remarkable lives, cultures, and events, and the lives, work, and artistry of Salvadoran Americans have added strength, vitality, and purpose to that tapestry; and

WHEREAS, The maturing Salvadoran American community continues to make great economic and cultural contributions to daily life in this state; and

WHEREAS, Many of these admirable individuals actively participate in the state educational system, further promoting their sense of American pride within the California community; and

WHEREAS, The strengths of the Salvadoran American culture can be preserved and passed on to future generations; and

WHEREAS, Salvadoran American families, communities, and the generations that follow are committed to maintain both Salvadoran and American cultures, while promoting cultural interchange; and

WHEREAS, Free of prejudices and as proud men and women, Salvadoran Americans participate in and contribute to the integration of the social, educational, professional, and political arena; and

WHEREAS, On August 6, 1525, the official founding of Villa de San Salvador was declared in the Valle de Las Hamacas (Valley of the Hammocks) where the indigenous ancestors of El Salvador fought historic battles against the submission and abuse of Spanish colonialism in order to preserve the life and liberty of the Cuscatleco population; and

WHEREAS, El Dia del Salvadoreño has become the national day of celebration in El Salvador; and

WHEREAS, The members of the Salvadoran American National Association (SANA) on behalf of Salvadoran American individuals, families, organizations, and communities in cities and states across the nation, wish to share the establishment of a nationally recognized and celebrated El Dia del Salvadoreño in the United States of America, beginning August 6, 2002, with the desire that this day be celebrated by all generations that follow; and

WHEREAS, Salvadoran American families should have an established day to acknowledge the contribution and value of their culture; and

WHEREAS, August 6 has already become the day of recognition for Salvadorans celebrated throughout the City and County of Los Angeles; now, therefore, be it

Resolved, by the Assembly of the State of California, the Senate thereof concurring, That the Legislature hereby declares each August 6 to be ''El Dia del Salvadoreño'' (Salvadoran Day) in recognition of all Salvadorans for their hard work and dedication, and their contributions to the stability and well-being of the people of California, and to the California economy; and be it further

Resolved, That the Chief Clerk of the Assembly transmit copies of this resolution to the author for appropriate distribution.

RESOLUTION CHAPTER 45

Assembly Concurrent Resolution No. 181—Relative to National Volunteer Week.

[Filed with Secretary of State May 3, 2002.]

WHEREAS, The Points of Light Foundation is a nonpartisan, nonprofit organization founded in May of 1990; and

WHEREAS, The mission of the foundation is ''to engage more people more effectively in volunteer efforts to help solve serious social problems''; and

WHEREAS, The Board of Directors of the Points of Light Foundation consists of prominent and politically diverse national leaders from the business, education, and nonprofit communities, and includes former President George Bush, who serves as honorary chairman of the board; and

WHEREAS, The foundation sponsors National Volunteer Week, an annual celebration of volunteerism and community service; and

WHEREAS, National Volunteer Week began in 1974 when President Richard M. Nixon signed an executive order establishing the week as a time to annually recognize and honor volunteers for their outstanding contributions to local communities; and

WHEREAS, Every President since has signed a proclamation promoting National Volunteer Week; and

WHEREAS, April 21 to 27, 2002, will be the 29th annual National Volunteer Week; and

WHEREAS, The theme for Volunteer Week 2002, which is ''Celebrate the American Spirit-VOLUNTEER!'', is particularly appropriate as we continue to witness the outpouring of contributions

and compassion following the September 11, 2001, attack on our country; and

WHEREAS, The practice of regularly volunteering time to community services projects should be promoted throughout California, as it enriches the lives of both those who receive services and those who volunteer; now, therefore, be it

Resolved by the Assembly of the State of California, the Senate thereof concurring, That the Legislature hereby proclaims its support for National Volunteer Week by proclaiming the week of April 21 through 27, 2002, as National Volunteer Week 2002, and extends its gratitude to the thousands of community volunteers throughout the state for their valuable gifts of service; and be it further

Resolved, That the Chief Clerk of the Assembly transmit copies of this resolution to the author for appropriate distribution.

RESOLUTION CHAPTER 46

Senate Concurrent Resolution No. 57—Relative to Cervical Cancer Awareness Month.

[Filed with Secretary of State May 6, 2002.]

WHEREAS, The State Department of Health Services estimates that over 1,400 women in California will be diagnosed with cervical cancer in 2002; and

WHEREAS, Twenty-eight percent of women suffering from cervical cancer will die this year; and

WHEREAS, The American Cancer Society estimates that about 4,100 women will die from cervical cancer in 2002; and

WHEREAS, The high incidence of death from cervical cancer is due mainly to a lack of early detection procedures available to women; and

WHEREAS, The disease is almost 100 percent curable if diagnosed and treated early; and

WHEREAS, Cervical cancer is one of the most successfully treatable cancers, with a five-year survival rate of 95 percent; and

WHEREAS, Latino and Asian women are among those with the highest risk of developing cervical cancer and the least likelihood of receiving routine, up-to-date screenings for cervical cancer; and

WHEREAS, Spreading awareness about cervical cancer would increase the chances of survival for a significant portion of California's population; and

WHEREAS, Cervical cancer takes the lives of many women in California and this loss of life is absolutely avoidable; now, therefore, be it

Resolved by the Senate of the State of California, the Assembly thereof concurring, That the Legislature of the State of California hereby encourages and promotes the efforts of people and health care practitioners in the state to increase awareness about cervical cancer, including the early detection, prevention, risk factors, and early warning symptoms and signs of the disease, by proclaiming January of every year as ''Cervical Cancer Awareness Month''; and be it further

Resolved, That the Secretary of the Senate shall immediately transmit copies of this resolution to the author for appropriate distribution.

RESOLUTION CHAPTER 47

Senate Concurrent Resolution No. 75—Relative to California Volunteer Week.

[Filed with Secretary of State May 6, 2002.]

WHEREAS, National Volunteer Week, which began in 1974 when President Richard Nixon signed an Executive order establishing an annual celebration of volunteering, is a time to recognize and celebrate the efforts of volunteers at the local, state, and national levels; and

WHEREAS, This year's National Volunteer Week is themed ''Celebrate the American Spirit—VOLUNTEER!''; and

WHEREAS, This theme is particularly appropriate in light of the continued outpouring of contributions and compassion that have followed in the wake of the September 11, 2001, attack on our country; and

WHEREAS, On the first Sunday of National Volunteer Week, USA WEEKEND devotes its entire national issue to the topic of volunteering and profiles winning projects from Make a Difference Day, which is celebrated on the fourth Saturday in October; and

WHEREAS, A national event, National Youth Service Day, designed to connect young people to service opportunities in their communities is also held during National Volunteer Week; and

WHEREAS, Volunteering enriches the lives of individuals throughout the state and country; now, therefore, be it

Resolved by the Senate of the State of California, the Assembly thereof concurring, That the Legislature hereby declares its support for National Volunteer Week by proclaiming the week of April 21 to 27, 2002, as California Volunteer Week 2002; and be it further

Resolved, That the Secretary of the Senate transmit copies of this resolution to the author for appropriate distribution.

RESOLUTION CHAPTER 48

Assembly Concurrent Resolution No. 157—Relative to the Girl Scouts.

[Filed with Secretary of State May 8, 2002.]

WHEREAS, Tuesday, March 12, 2002, marks the 90th anniversary of the Girl Scouts of the United States of America; and

WHEREAS, In 1912, Juliette Gordon Low founded the Girl Scouts with just 18 girls and a dream in which she envisioned ''something for all the girls,'' to enable them to serve their communities, experience the outdoors, and contribute to international understanding and world peace; and

WHEREAS, Now 90 years later her efforts are responsible for creating the largest girl-serving organization in the world with membership surpassing 2.7 million nationally, of which 250,000 are girls in California; and

WHEREAS, Nationwide 233,000 troops provide opportunities for girls between 5 and 17 years of age to discover the fun, friendship, and power of girls together, as Daisy Girl Scouts, Brownie Girl Scouts, Junior Girl Scouts, Cadette Girl Scouts, and Senior Scouts; and

WHEREAS, During the 1960's, the Girl Scouts began programs and projects focused on overcoming prejudice and building relationships with those of all ages, religions, classes, and races; and

WHEREAS, The Girl Scouts will lead businesses and communities to teach girls the skills needed to take active roles in mathematics, science, and technology careers and to fulfill our country's economic needs; and

WHEREAS, One in four American women has been a Girl Scout and the organization is committed to outreach efforts reflective of their theme ''Girl Scouting: For Every Girl, Everywhere''; and

WHEREAS, Through the Girl Scouts, every girl everywhere grows strong, gains self-confidence and skills for success, and learns her duty to the world around her; and

WHEREAS, Through participation in Girls' Voices, a national community service project, every girl will learn to use her own voice to address an issue of concern to her and perhaps make a change for the better in her community; and

WHEREAS, Some 50 million women have enjoyed the benefits of the Girl Scout program, as an American tradition, for 90 years; and

WHEREAS, Of the 34 women currently serving in the California Legislature, at least eight were members of, or leaders in, the Girl Scouts of the United States of America, including Assembly Members Alquist, Chu, Leach, Pavley, Strom-Martin, and Thomson and Senators Bowen and Romero; now, therefore, be it

Resolved, by the Assembly of the State of California, the Senate thereof concurring, That the Legislature acknowledges with pride the significant role the Girl Scouts has played in mentoring young women throughout California and the nation, as an organization ''where girls grow strong;'' and be it further

Resolved, That the Legislature commends the Girl Scouts of the United States of America for 90 years of service and for inspiring millions of girls with the highest ideals of character, conduct, and patriotism; and be it further

Resolved, That the Legislature encourages the people of California to participate in activities and celebrations appropriate to this occasion; and be it further

Resolved, That the Chief Clerk of the Assembly transmit copies of this resolution to the author for appropriate distribution.

RESOLUTION CHAPTER 49

Assembly Concurrent Resolution No. 161—Relative to Public Service Recognition Week.

[Filed with Secretary of State May 8, 2002.]

WHEREAS, Public employees at every level of government faithfully serve their fellow Californians; and

WHEREAS, There are approximately 1.2 million employees in local government in California, over 400,000 employees in state government, and numerous civilian and military employees of the federal government based in California; and

WHEREAS, Californians are aware of the many contributions public employees have made to the quality of their lives, in occupations that run the gamut from accountants to zoologists, including teachers, scientists, police officers, court employees, nurses, custodians, engineers, food inspectors, and social workers, among countless others; and

WHEREAS, The state values a professional civil service whose highest principle is duty to the public, whose foremost commitment is

to excellence, and whose experience and expertise are a resource to be used and respected for the benefit of all Californians; and

WHEREAS, The millions of workers who serve at all levels of government in California are men and women of knowledge, ability, and integrity who deserve to be recognized for their dedicated service; and

WHEREAS, The Legislature, pursuant to Resolution Chapter 22 of the Statutes of 1999, has designated the first Monday of May to the following Sunday of May, inclusive, each year as ''Public Service Recognition Week''; and

WHEREAS, Pursuant to Resolution Chapter 22 of the Statutes of 1999, for the current calendar year the week of May 5 to May 11, 2002, inclusive, is designated as Public Service Recognition Week in California to honor these employees and to provide a dual opportunity to pay tribute to our public employees and to inform the people of California about the scope and importance of public service, including the range of employment opportunities available to our young people; now, therefore, be it

Resolved by the Assembly of the State of California, the Senate thereof concurring, That the Legislature hereby recognizes the week of May 5 through May 11, 2002, as Public Service Recognition Week to honor those individuals who devote their careers to professional civil service, and encourage the people of the state, counties, cities, and special districts to observe this week with appropriate programs, ceremonies, and activities.

RESOLUTION CHAPTER 50

Assembly Concurrent Resolution No. 185—Relative to California Earthquake Preparedness Month.

[Filed with Secretary of State May 8, 2002.]

WHEREAS, The Federal Emergency Management Agency estimates that of the nation's $4.4 billion average annual capital and income losses due to earthquakes, 74 percent of those losses occur in California; and

WHEREAS, Major earthquakes registering magnitudes between 6.3 and 8.3 have occurred in California every 5.4 years, on average, for the past 200 years; and

WHEREAS, These earthquakes have resulted in loss of life, significant property damage, and indirect costs; and

WHEREAS, The United States Geological Survey estimates that there is a 90 percent chance that a major earthquake will strike an urban area in California within the next 30 years; and

WHEREAS, The majority of Californians live within 20 miles of a major earthquake fault; and

WHEREAS, Mitigating measures can save lives, reduce property damage, and alleviate traffic and economic dislocation caused by earthquakes; and

WHEREAS, The Federal Emergency Management Agency estimates that for every dollar spent on earthquake mitigation, $2 to $6 is saved if an earthquake occurs; and

WHEREAS, Education about the danger of earthquakes in California and the value of mitigation is the key to taking action at the city, county, and state levels of government; and

WHEREAS, It is important for these levels of government to work cooperatively with citizens, each other, the federal government, and other nations to mitigate damage caused by earthquakes; and

WHEREAS, It is vital that we examine the lessons learned from recent earthquakes in Seattle, El Salvador, and India, and that we share our knowledge with other states and nations; now, therefore, be it

Resolved by the Assembly of the State of California, the Senate thereof concurring, That the Legislature of the State of California hereby declares that the month of April is California Earthquake Preparedness Month and urges all Californians and government agencies to engage in education, evaluation of seismic hazards, mitigation, safety activities, and the exchange of information related to earthquake preparedness with other states and nations during that month; and be it further

Resolved, That the Chief Clerk of the Assembly transmit copies of this resolution to the author for appropriate distribution.

RESOLUTION CHAPTER 51

Assembly Joint Resolution No. 35—Relative to the Mexicali/Calexico border crossing.

[Filed with Secretary of State May 8, 2002.]

WHEREAS, Persons wishing to cross the international border between Mexico and California have traditionally been subject to long wait times during peak periods; and

WHEREAS, An unfortunate byproduct of the heightened security regime implemented since the September 11, 2001, terrorist attacks on the United States has been an increase in already long wait times at the border; and

WHEREAS, The economic well-being of the border regions in both the United States and Mexico is dependent on flows of people and goods across the border with a minimum of delay; and

WHEREAS, The economy of Imperial County depends heavily on shoppers from Mexico; and

WHEREAS, Federal officials have successfully implemented reduced border crossing times for persons qualifying for use of the Secure Electronic Network For Travelers Rapid Inspection (SENTRI) program, which provides access to a dedicated commuter lane and uses automated vehicle identification technology at a limited number of United States international border crossings, including the Otay Mesa crossing near Tijuana/San Diego; and

WHEREAS, Persons eligible for the SENTRI program have been previously identified as low risk persons who regularly use the border crossing; and

WHEREAS, The SENTRI program provides law enforcement with good, solid information about program participants, and avoids the need to continuously inspect these precleared individuals; and

WHEREAS, It would be beneficial to commerce and tourism on both sides of the border to implement the SENTRI program at the Mexicali/Calexico border crossing in order to decrease the border wait times for both United States and Mexican citizens; and

WHEREAS, The government of the State of Baja California has indicated its interest in expansion of the SENTRI program; now, therefore, be it

Resolved by the Assembly and Senate of the State of California, jointly, That the Legislature respectfully memorializes the United States Congress and federal agencies, including the Immigration and Naturalization Service and the United States Customs Service, to take the necessary steps to implement the SENTRI program at the Mexicali/Calexico border crossing; and be it further

Resolved, That the Chief Clerk of the Assembly transmit copies of this resolution to the President and Vice President of the United States, the Speaker of the House of Representatives, the Chairpersons of the House and Senate Judiciary Committees, to each Senator and Representative from California in the Congress of the United States, and to the Immigration and Naturalization Service and the United States Customs Service.

RESOLUTION CHAPTER 52

Senate Concurrent Resolution No. 70—Relative to Aviation Maintenance Technician Day.

[Filed with Secretary of State May 10, 2002.]

WHEREAS, The Federal Aviation Administration Western Pacific Region will participate in Aviation Maintenance Technician Day, an event honoring aviation maintenance technicians from all around the world; and

WHEREAS, This event will advance public appreciation for the significant and vital contributions of aviation maintenance technicians; and

WHEREAS, Aviation maintenance technicians are all too often unsung heroes whose achievements are overlooked; and

WHEREAS, One such unsung hero of aviation was Mr. Charles Edward Taylor; and

WHEREAS, On April 30, 1903, at the Wright Brother's Bicycle Shop in Dayton, Ohio, Charles Edward Taylor began working on the first engine built for Orville and Wilbur Wright's airplane named The Flyer; and

WHEREAS, Mr. Taylor pioneered uncharted theories of engine design by using only a lathe and drill press to construct a four-cylinder piston engine weighing 179 pounds and producing 12 horsepower in just six weeks; and

WHEREAS, On the morning of December 17, 1903, at the base of Kill Devil Hills, south of the village of Kitty Hawk, North Carolina, the Wright brothers made a mark in aviation history by successfully flying the first powered airplane; and

WHEREAS, This incredible achievement would not have been possible if it were not for Charles Edward Taylor, the first aviation mechanic in powered flight, the man who built and maintained the first aircraft engines; and

WHEREAS, The Federal Aviation Administration Western Pacific Region is working to bring attention to the significance of Charles Edward Taylor's achievements, and to the contributions of the aviation maintenance industry, by recognizing May 24th, Mr. Taylor's birthday, as Aviation Maintenance Technician Day; now, therefore, be it

Resolved by the Senate of the State of California, the Assembly thereof concurring, That the Legislature hereby proclaims May 24, 2002, and every May 24 thereafter, as Aviation Maintenance Technician Day in the State of California; and be it further

Resolved, That the Secretary of the Senate transmit copies of this resolution to the author for appropriate distribution.

RESOLUTION CHAPTER 53

Senate Concurrent Resolution No. 76—Relative to Autism Treatment Awareness Month.

[Filed with Secretary of State May 10, 2002.]

WHEREAS, Autism is a physical disorder of the brain that can cause a lifelong developmental disability; and

WHEREAS, In the United States there are at least 750,000 people with autism; and

WHEREAS, Only 10 years ago, it was estimated that autism affected one out of 10,000 children; two years ago, it was estimated that autism affected one out of 500 children; and current estimates are that autism affects one out of 300 children nationwide and, in some areas of the country, the rate is as high as one out of 150 children; and

WHEREAS, In California we are adding on average eight new children a day, seven days a week, with autism to California's Developmental Services System; and

WHEREAS, The diagnosis and treatment of autism may require assessment and intervention by a multidisciplinary team of experts; and

WHEREAS, The early intervention behavior analysis programs have shown that a program of intensive early intervention treatment that focuses on a multidisciplinary approach relying in large part on family and community participation can produce a positive outcome; and

WHEREAS, Current research being conducted into the biological causes and treatment regimens for autism, like that being undertaken at the Medical Investigation of Neurodevelopmental Disorders Institute (M.I.N.D.) at the University of California at Davis, are showing great promise and therefore should be encouraged and supported; and

WHEREAS, The University of California at Irvine, Department of Pediatrics, has developed a project "For O.C. Kids" that will address the need for increased awareness and intervention for children with developmental disorders, particularly autism; and

WHEREAS, Family based organizations, such as the Sacramento area Families for Early Autism Treatment (FEAT), the Autism Society of America, Cure Autism Now (CAN), and the southern California area Talk About Curing Autism (TACA), provide invaluable resources and support for autistic children and their families; and

WHEREAS, Additional special education teachers and curriculum for autistic children are needed, as well as behavioral specialists, occupational speech therapists, and medical professionals, to ultimately reduce the risk of institutionalization of autistic children; and

WHEREAS, Parental involvement, community integration, early intervention, increased acceptance of children with special needs, and systematic treatment are all key components that would help make a more favorable future likely for children with autism; and

WHEREAS, Heightened awareness and education about autism help to achieve these components; now, therefore, be it

Resolved by the Senate of the State of California, the Assembly thereof concurring, That the Legislature hereby proclaims the month of April 2002, as Autism Treatment Awareness Month, and acknowledges the contributions made in the area of early autism intervention treatment by experts in the field as well as the families involved; and be it further

Resolved, That the Legislature continues to support research into the causes and treatment of autism at the UC Davis M.I.N.D. Institute; and be it further

Resolved, That the Legislature recognizes that the UC Davis M.I.N.D. Institute is unique in investigating autism and other neurodevelopmental disorders, and that collaborations between researchers and scientists at UC Davis bring a wealth of resources to study the gamut of neurodevelopmental disorders and to design and test potential treatments; and be it further

Resolved, That the Legislature supports the goal of increasing federal funding for aggressive research to learn the root causes of autism, to identify the best methods of prevention, early intervention, and treatment, and to promote understanding of the special needs of autistic persons; and be it further

Resolved, That the Legislature urges the United States Department of Health and Human Services to continue to press for the swift and full implementation of the Children's Health Act of 2000, particularly the establishment of not less than three ''Centers of Excellence'' at the Centers for Disease Control and Prevention and not less than five ''Centers of Excellence'' at the National Institutes of Health, in order to monitor the prevalence of autism at a national level, leading to a better understanding of autism and related disorders; and be it further

Resolved, That the Secretary of the Senate transmit copies of this resolution to the President and Vice President of the United States, the State Department of Developmental Services, Area Board III, the State Department of Education, local chapters of the Autism Society, regional centers, the Association of Regional Center Agencies, Protection and Advocacy, Inc., the UC Davis M.I.N.D. Institute, For O.C. Kids, the United States Department of Health and Human Services, the National

Institutes of Health, the Centers for Disease Control and Prevention, the California School Boards Association, the Developmental Disabilities Council, and to each Senator and Representative from California in the Congress of the United States.

RESOLUTION CHAPTER 54

Senate Concurrent Resolution No. 62—Relative to the United States Military Academy.

[Filed with Secretary of State May 15, 2002.]

WHEREAS, On March 16, 1802, President Thomas Jefferson signed into law a bill that authorized the establishment of a military academy to be located at West Point, New York; and

WHEREAS, The year 2002 marks the bicentennial of the founding of the United States Military Academy at West Point, New York; and

WHEREAS, The spirit of this bicentennial is to celebrate the contributions of the United States Military Academy to the nation and the world; and

WHEREAS, During the year 2002, the bicentennial of the founding of the United States Military Academy will be observed at West Point and at other designated places throughout the world; now, therefore, be it

Resolved by the Senate of the State of California, the Assembly thereof concurring, That the Legislature of the State of California commemorates the bicentennial of the founding of the United States Military Academy at West Point, New York; and be it further

Resolved, That the Secretary of the Senate transmit copies of this resolution to the author for appropriate distribution.

RESOLUTION CHAPTER 55

Senate Joint Resolution No. 34—Relative to Medicare coverage of oral cancer drugs.

[Filed with Secretary of State May 20, 2002.]

WHEREAS, Cancer is a leading cause of morbidity and mortality in the State of California and throughout the nation; and

WHEREAS, Cancer is disproportionately a disease of the elderly, with more than one-half of all cancer diagnoses occurring in persons 65

years of age or older, who are thus dependent on the federal Medicare program for provision of cancer care; and

WHEREAS, Treatment with anticancer drugs is the cornerstone of modern cancer care. Elderly cancer patients must have access to potentially life-extending drug therapy, but the Medicare program's coverage of drugs is limited to injectable drugs or oral drugs that have an injectable version; and

WHEREAS, The nation's investment in biomedical research has begun to bear fruit with a compelling array of new oral anticancer drugs that are less toxic, more effective, and more cost-effective than existing therapies, but, because these drugs do not have an injectable equivalent, they are not covered by Medicare; and

WHEREAS, Noncoverage of these important new products leaves many Medicare beneficiaries confronting the choice of either substantial out-of-pocket personal costs or selection of more toxic, less effective treatments that are covered by the program; and

WHEREAS, Medicare's failure to cover oral anticancer drugs leaves at risk many beneficiaries suffering from blood-related cancers like leukemia, lymphoma, and myeloma, as well as cancers of the breast, lung, and prostate; and

WHEREAS, Certain members of the United States Congress have recognized the necessity of Medicare coverage for all oral anticancer drugs and introduced legislation in the 107th Congress to achieve that result; now, therefore, be it

Resolved by the Senate and Assembly of the State of California, jointly, That the Legislature of the State of California respectfully memorializes the President and Congress of the United States to adopt legislation requiring the Medicare program to cover all oral anticancer drugs; and be it further

Resolved, That the Secretary of the Senate transmit copies of this resolution to the President and Vice President of the United States, the Speaker of the House of Representatives, each Senator and Representative from California in the Congress of the United States, the Secretary of Health and Human Services, and the Administrator of the Centers for Medicare and Medicaid Services.

RESOLUTION CHAPTER 56

Senate Joint Resolution No. 35—Relative to American Indian health services.

[Filed with Secretary of State May 20, 2002.]

WHEREAS, A major national goal of the federal government is to raise the health status of American Indians to the highest possible level by providing quality health services and to provide for the maximum participation of American Indians in the planning, management, and delivery of those services; and

WHEREAS, Despite existing health services, the unmet health needs of American Indians is severe and the health status of the individual is far below that of the general population of the United States; and

WHEREAS, American Indians suffer a death rate for diabetes mellitus that is 249 percent higher than the corresponding death rate of all other races in the United States; a death rate from pneumonia and influenza that is 71 percent greater than the corresponding death rate of all other races in the United States; a death rate from tuberculosis that is 533 percent greater than the death rate of corresponding races; and a death rate from alcoholism that is 627 percent higher than the corresponding death rate of other races in the United States; and

WHEREAS, The Indian Health Care Improvement Act (IHCIA) was enacted in the 94th Congress (P.L. 94-437) to implement the federal responsibility for the care and education of the American Indian people by improving the services and facilities of federal American Indian health programs; and

WHEREAS, The IHCIA provides for California's 109 federally recognized tribes and contains ''special eligibility'' language for thousands of nonrecognized American Indians who represent one-third of the eligible population through direct descendancy, who hold trust interests in public domain or allotments, and are members of the community served by local tribally operated programs funded by the Indian health services; and

WHEREAS, Both the House of Representatives, pursuant to H.R. 1662 and the Senate, pursuant to S. 212 are considering legislation that would reauthorize the IHCIA ; now, therefore, be it

Resolved by the Senate and Assembly of the State of California, jointly, That the Legislature of the State of California memorializes the President and Congress of the United States to pass legislation reauthorizing the Indian Health Care Improvement Act in the 107th Session of Congress; and be it further

Resolved, That the Secretary of the Senate transmit copies of this resolution to the President and Vice President of the United States, the Speaker of the House of Representatives, each Senator and Representative from California in the Congress of the United States, the Attorney General of the United States, the Chief Justice of the United

States, and the Secretary of the United States Department of Health and Human Services.

RESOLUTION CHAPTER 57

Senate Joint Resolution No. 44—Relative to Amyotrophic Lateral Sclerosis Awareness Month.

[Filed with Secretary of State May 20, 2002.]

WHEREAS, Amyotrophic lateral sclerosis or ALS is better known as Lou Gehrig's disease; and

WHEREAS, ALS is a fatal neurodegenerative disease characterized by degeneration of cell bodies of the lower motor neurons in the gray matter of the anterior horns of the spinal cord; and

WHEREAS, The initial symptom of ALS is weakness of the skeletal muscles, especially those of the extremities; and

WHEREAS, As ALS progresses the patient experiences difficulty in swallowing, talking, and breathing; and

WHEREAS, ALS eventually causes muscles to atrophy and the patient becomes a functional quadriplegic; and

WHEREAS, ALS does not affect a patient's mental capacity, so that the patient remains alert and aware of his or her loss of motor functions and the inevitable outcome of continued deterioration and death; and

WHEREAS, ALS occurs in adulthood, most commonly between the ages of 40 to 70 years, with the peak age about 55 years, and affects men two to three times more often than women; and

WHEREAS, Over 5,000 new ALS patients are diagnosed annually; and

WHEREAS, On average, patients diagnosed with ALS only survive two to five years from the time of diagnosis; and

WHEREAS, ALS has no known cause, prevention, or cure; and

WHEREAS, Amyotrophic Lateral Sclerosis Awareness Month increases the public's awareness of ALS patients' circumstances and acknowledges the terrible impact this disease has not only on the patient but on his or her family as well, and recognizes the research being done to eradicate this horrible disease; now, therefore, be it

Resolved by the Senate and Assembly of the State of California, jointly, That the Legislature hereby proclaims the month of May 2002 as Amyotrophic Lateral Sclerosis Awareness Month in California; and be it further

Resolved, That the Legislature of the State of California memorializes the President and Congress of the United States to enact legislation to

provide additional funding for research in order to find a treatment and eventually a cure for amyotrophic lateral sclerosis; and be it further

Resolved, That the Secretary of the Senate transmit copies of this resolution to the President and Vice President of the United States, the Speaker of the House of Representatives, each Senator and Representative from California in the Congress of the United States, and the United States Secretary of Health and Human Services.

RESOLUTION CHAPTER 58

Assembly Concurrent Resolution No. 176—Relative to breast cancer awareness.

[Filed with Secretary of State May 21, 2002.]

WHEREAS, Breast cancer is the leading cause of cancer deaths among women 40 to 59 years of age in the United States; and

WHEREAS, More than 75 percent of all breast cancers occur in women with no known risk factors; and

WHEREAS, All women are at risk, and the chances of a woman getting breast cancer increase as she ages; by 30 years of age, one in 2,525 women; and by 50 years of age, one in 50 women; and

WHEREAS, An estimated 203,500 new invasive cases of breast cancer are expected to occur among women in the United States during 2002, and an estimated 39,600 women will die from breast cancer; and

WHEREAS, White non-Hispanic women have the highest incidence rate for breast cancer, while Korean women have the lowest, and breast cancer is the most common cancer in African-American women, at the rate of 100.2 per 100,000 women, and the second leading cause of death among African-American women, exceeded only by lung cancer; and

WHEREAS, Breast cancer has a very high cure rate, with 97 percent of women surviving for five years if the cancer is diagnosed early, and the best opportunity to reduce mortality and increase treatment options is through early detection, and mammography is the best known method of early detection; and

WHEREAS, For this purpose, the Susan G. Komen Breast Cancer Foundation, Inc., was formed in 1982, with a mission to eradicate breast cancer as a life-threatening disease by advancing research, education, screening, and treatment; and

WHEREAS, The Susan G. Komen Race for the Cure Series has become the largest series of 5K runs and fitness walks in the world, and in 2002, races will be held in more than 100 United States cities and three

foreign countries with over 1.3 million participants; now, therefore, be it

Resolved by the Assembly of the State of California, the Senate thereof concurring, That the Legislature hereby proclaims its support for the Race for the Cure by encouraging all Californians to show their support, love, and commitment to someone who has battled breast cancer and to raise public awareness of the need for early breast cancer screening and treatment; and be it further

Resolved, That the Chief Clerk of the Assembly transmit copies of this resolution to the author for appropriate distribution.

RESOLUTION CHAPTER 59

Assembly Concurrent Resolution No. 180—Relative to California Earth Day 2002.

[Filed with Secretary of State May 21, 2002.]

WHEREAS, Thirty-two years ago, millions of Americans of all ages, walks of life, and political affiliations joined together on the first Earth Day in a demonstration of concern and support for the environment; and

WHEREAS, Public environmental awareness, fostered by the first Earth Day, has led to the enactment of key federal laws, including the Clean Air Act and the Clean Water Act, the National Environmental Policy Act, and the creation of the Environmental Protection Agency, to protect the environment; and

WHEREAS, The spirit of the first Earth Day has continued to increase public environmental awareness inspiring many Californians to make individual decisions that reduce adverse environmental impacts; and

WHEREAS, The California environment, including its rocky coasts, sandy beaches, redwood forests, stark deserts, and towering mountains, is among the most beautiful in the nation; and

WHEREAS, The Legislature recognizes and has helped safeguard the state's unique scenic beauty, natural resources, and the quality of its water, air, and land through the enactment of laws including the California Environmental Quality Act, the California Coastal Act of 1976, the Hazardous Waste Control Law, the California Integrated Waste Management Act of 1989, and the California Clean Air Act; and

WHEREAS, The Legislature evinced its intent to protect the environment by enacting and presenting to the voters the Safe Drinking Water, Clean Water, Watershed Protection, and Flood Protection Bond Act of 2000, the Safe Neighborhood Parks, Clean Water, Clean Air, and Coastal Protection Bond Act of 2000, and the California Clean Water,

Clean Air, Safe Neighborhood Parks, and Coastal Protection Act of 2002; and the people of California affirmed this intent by approving each of these measures; and

WHEREAS, New and continuing threats of increasing severity to our environment, including global climate change, stratospheric ozone depletion, acid rain, polluted oceans and waterways, loss of forests, wetlands, and other wildlife habitats, and contamination of air and drinking water sources by nuclear, hazardous, and solid wastes, demand renewed public involvement; and

WHEREAS, The protection of California's natural resources helps stimulate our economy and enhance our quality of life; and

WHEREAS, Sometimes our daily actions inadvertently pollute and degrade the fragile environment that all life depends on to survive, and we must continue to make each day an ''Earth Day'' if we want to ensure a healthy environment for future generations; and

WHEREAS, Activities to celebrate, on April 22, 2002, the 32nd anniversary of the first Earth Day, will focus public attention on and encourage personal and community participation in environmental protection through recycling, conserving energy and water, using efficient transportation, and other environmentally responsible personal actions; and

WHEREAS, Earth Day 2002 will provide an impetus for additional protection of the environment, and continued local, state, national, and international efforts will be required at an unprecedented level during the next decade in order to remedy the environmental problems that we face; now, therefore, be it

Resolved by the Assembly of the State of California, the Senate concurring, That April 22, 2002, is hereby declared to be ''California Earth Day''; and be it further

Resolved, That the Legislature reaffirms its commitment to the fundamental principles that underlie the state's environmental laws, including the protection of human health from environmental hazards through the prevention of environmental risks and the maintenance of health-based standards; the continuance of programs to safeguard air and water quality; the recycling and reuse of materials, whenever feasible, to reduce the economic and environmental costs of disposal, and to recapture the value of these materials for the state's economy; the effective cleanup of pollution of the state's land, air, and water resources; the preservation of natural ecosystems; and maintenance of the fundamental right of the public to know about environmental hazards and to fully participate in public decisions regarding the environment; and be it further

Resolved, That California recognizes the importance of the environment and encourages residents to include in their daily lives

those activities that promote the goals of Earth Day 2002; and be it further

Resolved, That the Chief Clerk of the Assembly shall transmit copies of this resolution to the Governor and to the Secretary of the Resources Agency and the Secretary for Environmental Protection.

RESOLUTION CHAPTER 60

Assembly Concurrent Resolution No. 197—Relative to Day of the Teacher.

[Filed with Secretary of State May 21, 2002.]

WHEREAS, An educated citizenry serves as the very foundation of our democracy; and

WHEREAS, Today's teachers mold the minds and train the workforce of the future; and

WHEREAS, No other profession touches as many persons with such a lasting effect; and

WHEREAS, Good teaching grows in value and pays dividends far beyond the classroom; and

WHEREAS, California long ago recognized the immeasurable value of our teachers and has designated the second Wednesday in May to be Day of the Teacher, a special observance that honors teachers and the teaching profession; and

WHEREAS, Day of the Teacher has been sponsored by the California Teacher's Association and the Association of Mexican American Educators and was first recognized in 1982; and

WHEREAS, California has patterned its celebration after the traditional ''El Dia del Maestro'' festivities observed in Mexico and other Latin American countries; and

WHEREAS, Day of the Teacher should be a day for school districts, parents, public officials, and the community to recognize the dedication and commitment of teachers who are educating our children; now, therefore, be it

Resolved by the Assembly of the State of California, the Senate thereof concurring, That the day of May 8, 2002, be proclaimed Day of the Teacher; and be it further

Resolved, That the Legislature urges all Californians to observe the Day of the Teacher by taking the time to remember and honor all teachers who give the gift of knowledge through teaching; and be it further

Resolved, That the Chief Clerk of the Assembly transmit copies of this resolution to the author for appropriate distribution.

RESOLUTION CHAPTER 61

Assembly Joint Resolution No. 31—Relative to antiterrorism funding.

[Filed with Secretary of State May 21, 2002.]

WHEREAS, The heinous terrorist attacks on the World Trade Center and the Pentagon on September 11, 2001, have deeply impacted the fabric of American life, provided a wakeup call to every American's awareness of the nation's vulnerability to terrorists attacks, and changed Americans' lives forever; and

WHEREAS, Californians are gravely concerned about the continued threat of violence and their own personal safety; and

WHEREAS, The takeover of airplane flights by unconscionable terrorists has increased the need for security by state and local governments at all airports and public facilities, including water systems, hospitals, bridges, and dams; and

WHEREAS, Recent horrific incidents of sending anthrax through the mail, other threats of bioterrorism, and hoaxes have increased demands upon public services, including public health departments and laboratories, public safety and fire protection agencies, hospitals, and emergency rooms, and state and local emergency response agencies; and

WHEREAS, City and county governments have experienced an increased awareness and demand from the general public for more public services in the area of public health and safety; and

WHEREAS, Cities and counties have appropriated millions of dollars for increased response and preparedness for potential terrorist threats and anticipate the need for additional funds to continue these efforts; and

WHEREAS, In this period of economic uncertainty and unprecedented need for enhanced local public safety and health services, cities and counties cannot afford these increased costs of security without additional funding; and

WHEREAS, There may be continued terrorism activities in California. For example, in San Diego County investigations revealed that some of the hijackers of September 11, 2001, were training in San Diego training facilities in preparation for the attacks; and

WHEREAS, Public safety officials require specialized training at all levels and local governments have seen increased demand for additional

personnel to effectively protect and serve citizens in the event of a major local incident; and

WHEREAS, Hazardous material teams lack the specialized equipment and protective gear to deal with bioterrorism and new public health threats; and

WHEREAS, Due to the continued bioterrorism threats and hoaxes, public health departments need additional staff to increase their surveillance activities for the identification of biological and chemical threats at the earliest possible stage; and

WHEREAS, Local health departments are the early warning system in the defense against bioterrorism; local health departments rely on strong linkages with other county agencies including emergency medical services, hospitals, county outpatient services, laboratories, mental health departments, and environmental health agencies in preparing for and responding to disasters; and

WHEREAS, The budgets of many public health departments have been neglected for several years, and in order to ensure an adequate response, if necessary, to any potential bioterrorism threat, public health infrastructure needs significant investment of state and federal resources. For example, Orange County has identified the need for $2.1 million for public health infrastructure and training in order for their public health system to respond to a public health crisis; and

WHEREAS, Local governments have already encountered budget overruns of 13 percent in public safety, with the City of Los Angeles alone incurring security costs in excess of $11 million in the first two and one-half months following September 11, 2001; and

WHEREAS, Santa Clara County alone has already appropriated $5 million for additional public safety services since September 11, 2001, and expects to spend an additional $7 million by June 30, 2002; and

WHEREAS, Cities and counties estimate over $1 billion in additional one-time and ongoing funding needs and the State of California anticipates expenditures of at least $500 million in 2002; and

WHEREAS, Local governments and the state are financially suffering from an economic recession and lack the funds to provide the required additional services and equipment; and

WHEREAS, Congress has approved a total of $8.3 billion for homeland defense in the emergency supplemental allocation sent to the President for his signature; and

WHEREAS, Senator Dianne Feinstein of California and Senator Hillary Rodham Clinton of New York have together proposed supplemental federal funding to assist state and local governments in security, prevention, and preparedness; now, therefore, be it

Resolved by the Assembly and Senate of the State of California, jointly, That the Legislature of the State of California respectfully

memorializes the President and the Congress of the United States to enact legislation to provide funds to states and local governments to provide the necessary security and relief measures to protect local citizens from terrorism; and be it further

Resolved, That the Chief Clerk of the Assembly transmit copies of this resolution to the President and Vice President of the United States, and to each Senator and Representative from California in the Congress of the United States.

RESOLUTION CHAPTER 62

Senate Concurrent Resolution No. 66—Relative to the California marine transportation system.

[Filed with Secretary of State May 21, 2002.]

WHEREAS, The sovereign State of California is the greatest maritime state in the nation; and

WHEREAS, The California marine transportation system includes ports, harbors, bays, rivers, channels, and canals; and

WHEREAS, The California marine transportation system is an integral part of the United States maritime industries; and

WHEREAS, California ports produce one-third of the value of all waterborne international trade nationwide; and

WHEREAS, The California marine transportation system is a vital component of the California transportation infrastructure; and

WHEREAS, The California marine transportation system is the cornerstone link for California's trade with the Pacific Rim; and

WHEREAS, The California marine transportation system provides Californians with thousands of industry related jobs, such as marine cargo handling, merchant marine officers, pilots and unlicensed crew members, marine construction, shipbuilding and repairing, long distance trucking, refrigerated warehousing and storage, petroleum and bulk chemicals, deep sea transportation of freight and passengers, passenger ferries, barge lines and operators, marine engineering services, and logistics management; and

WHEREAS, The California Maritime Academy, a unique institution of the California State University in the City of Vallejo, helps produce the future leaders of our nation's maritime and transportation industries; with notable impact on logistics, port, shipbuilding, fishing, oil, oceanographic, environmental, and marine engineering organizations that are significant contributors to our national and state economies; now, therefore, be it

Resolved by the Senate of the State of California, the Assembly thereof concurring, That, commencing May 2002, the Legislature hereby proclaims the month of May as California Marine Transportation System Month; and be it further

Resolved, That the California marine transportation system be recognized as a vital component that is integral to the California transportation infrastructure; and be it further

Resolved, That a California marine transportation system flag be adopted and displayed or flown at all ports in the state, in recognition of the fact that those ports are part of that system; and be it further

Resolved, That the Legislature declares its intent to promote the funding for programs and pilot projects necessary to the advancement of the California marine transportation system; and be it further

Resolved, That the Legislature declares its intent to support the creation of events recognizing the indispensable role the California marine transportation system plays in the economic and general welfare of the State of California; and be it further

Resolved, That the Legislature intends to make this an annual event and, as a testimonial, declares that appropriate local events may be held commencing in May 2002 and thereafter, and further, that appropriate statewide events shall be held commencing May 2002 and thereafter in recognition of this resolution; and be it further

Resolved, That the Secretary of the Senate transmit copies of this resolution to the Governor, the Department of Boating and Waterways, the Department of Fish and Game, the Department of Transportation, the California Transportation Commission, and the State Lands Commission.

RESOLUTION CHAPTER 63

Senate Concurrent Resolution No. 80—Relative to Grandmothers for Peace International.

[Filed with Secretary of State May 22, 2002.]

WHEREAS, Grandmothers for Peace International is a nonprofit, grassroots organization that was formed on May 19, 1982; and

WHEREAS, Originally named Grandmothers for Peace, the organization was formed during the Cold War era, with the ultimate goal of creating a ''better world for future generations''; and

WHEREAS, The organization was founded by the late Barbara Wiedner when she gathered together a group of 11 grandmothers in her Sacramento, California, home after she became aware that Mather Air

Force Base in Rancho Cordova, California, was the site of 150 nuclear weapons; and

WHEREAS, The original intent of Grandmothers for Peace International was to support other local peace organizations by educating communities about the dangers of nuclear weapons; and

WHEREAS, Widespread publicity about the organization and its activities stimulated a tremendous increase in membership across the country and resulted in the organization modifying its intent to include activism in its mission to promote peace; and

WHEREAS, The work of Grandmothers for Peace International has expanded to address the dangers of nuclear powerplants, radioactive waste, subcritical and computerized nuclear testing, space-based nuclear development, global militarism, and other peace and justice issues that affect the human family; and

WHEREAS, The abolition of nuclear weapons and all weapons of mass destruction remains a top priority for the organization, as well as addressing violence and injustice that continue to plague our planet; and

WHEREAS, Grandmothers for Peace International is composed of volunteers and activists of all ages, both male and female, and, in 1990, expanded to include individuals from around the globe, therefore causing it to add ''International'' to its original title of Grandmothers for Peace; and

WHEREAS, Several ''Peace and Justice Scholarship Awards'' are presented by the organization to students entering college who have volunteered their time to good causes in their communities and who plan to use their education in life-enhancing work, especially in nonviolent conflict resolution; and

WHEREAS, The scholarship program and humanitarian actions of Grandmothers for Peace International are financed entirely through its fundraising letters and continuation as an all-volunteer organization; and

WHEREAS, Grandmothers for Peace International will pay tribute to its founder, Barbara Wiedner, who died on December 2, 2001, and who was dedicated to the mission and principles that this organization was established to promote; now, therefore, be it

Resolved by the Senate of the State of California, the Assembly thereof concurring, That the California Legislature recognize May 19, 2002, as the 20th anniversary of Grandmothers for Peace International; and be it further

Resolved, That the Secretary of the Senate transmit copies of this resolution to the Governor.

RESOLUTION CHAPTER 64

Assembly Concurrent Resolution No. 174—Relative to Women's Health Month.

[Filed with Secretary of State May 29, 2002.]

WHEREAS, Heart disease is the leading cause of death for California women, and women tend to die at an earlier age from heart disease because they tend to receive care later in the course of the disease; and

WHEREAS, Women are more likely than men to die from tobacco-related cancers, which have surpassed breast cancer as the leading cause of cancer deaths among women; and

WHEREAS, Women and girls are at a greater risk for complications, including pelvic inflammatory disease and infertility, resulting from sexually transmitted diseases; and

WHEREAS, Domestic violence is the leading cause of injury to adult women; and

WHEREAS, The leading cause of workplace injury deaths for women is homicide; and

WHEREAS, Women face unique health risks by virtue of their reproductive status; and

WHEREAS, Twenty percent of all California women are uninsured and are less likely to access health care services because of their uninsured status; and

WHEREAS, Low-income, older women, and women who are members of certain racial and ethnic groups are less likely to obtain necessary health care, as a result of the lack of health insurance; and

WHEREAS, Women have a longer life expectancy and experience more chronic diseases than men; and

WHEREAS, Women are most likely to serve as the primary caregiver for their children, spouse, parents, and others; and

WHEREAS, Women who are members of certain racial and ethnic minority groups are disproportionately affected by health conditions, including tobacco-related cancers, heart disease, depression, and reproductive health risks; and

WHEREAS, The incidence of AIDS cases among women is on the rise; and

WHEREAS, Osteoporosis affects five million Californians, 80 percent of whom are women; and

WHEREAS, Recognition of health issues unique to women and differences in health and health care experiences across cultures and age groups among women is critical to the development of strategies for improving the health care and quality of life for women and girls; and

WHEREAS, Continued efforts to meet the health care needs of the state's women and girls are necessary; now, therefore, be it

Resolved by the Assembly of the State of California, the Senate thereof concurring, That the Legislature of the State of California hereby proclaims the month of May to be Women's Health Month, and encourages and promotes efforts to increase awareness about all women's health issues; and be it further

Resolved, That the Chief Clerk of the Assembly transmit copies of this resolution to the author for appropriate distribution.

RESOLUTION CHAPTER 65

Assembly Concurrent Resolution No. 187—Relative to the 60th anniversary of the fall of Bataan.

[Filed with Secretary of State May 29, 2002.]

WHEREAS, Approximately 200,000 Filipino soldiers, driven by a sense of honor and dignity, battled under the United States Command after 1941 to preserve our liberty; and

WHEREAS, The vast majority of American soldiers who opposed the Japanese invasion of the Philippines from December 1941 through March 1942 were Filipinos, who gallantly fought down the length of the Bataan Peninsula, and endured unbearable hardships during the siege of Corregidor; and

WHEREAS, The surrender of American and Filipino troops by General King on April 9, 1942, on the Bataan Peninsula led to the infamous Bataan death march; and

WHEREAS, April 9, 1942, is remembered in the world and in United States history as the fall of Bataan in the Philippines, where 90,000 troops of the United States Armed Forces in the Far East fought for five months under the courageous leadership of Lieutenant General Jonathan M. Wainwright and delayed the Japanese forces timetable to conquer the Pacific and finally, after facing insurmountable odds, surrendered to the Japanese forces; and

WHEREAS, On June 14, 1944, President Franklin D. Roosevelt paid tribute to these fighters when he said ''We are ever mindful of the heroic role of the Philippines and their people on the present historical conflict. Theirs is the only substantial area and theirs is the only substantial population under the American flag to suffer a lengthy invasion by the enemy''; and

WHEREAS, Congress passed legislation in 1946 limiting and precluding Filipino veterans that fought in the service of the United

States during World War II from receiving most veterans benefits that were available to them before 1946; and

WHEREAS, On the 60th year anniversary of the fall of Bataan, there are still 13,000 Filipino-American World War II veterans living in the United States, and 6,000 of them are residents of California on the West Coast and 60,000 in the Philippines who are still not recognized as American World War II veterans and are living under deplorable conditions; and

WHEREAS, It is fitting and proper that we honor the sacrifices and services of these individuals and pay tribute to the heroism of the Filipino forces under the United States Armed Forces in the Far East and the more than 200,000 guerrilla fighters who fought for more than three years under the occupation to defend the flag of the United States in its only colonial possession in Southeast Asia during the Second World War; and

WHEREAS, On this occasion we call on our legislators in the United States Congress and in the State of California to honor these men and women who served and fought for the United States by supporting the Filipino Veterans Equity Bill (HR 491 in the House of Representatives and SB 1042 in the Senate) that will remedy their lack of status and recognize them as United States World War II veterans; and

WHEREAS, We remember the 60th anniversary of the fall of Bataan, April 9, 2002, and we honor, as well as recognize, the services of the 200,000 Filipino and American soldiers who fought for democracy to defeat the overwhelming invading forces in Asia and the Pacific; now, therefore, be it

Resolved by the Assembly of the State of California, the Senate concurring, That April 9, 2002, is hereby remembered as the 60th anniversary of the fall of Bataan; and be it further

Resolved, That the Chief Clerk of the Assembly shall transmit copies of this resolution to the author for appropriate distribution.

RESOLUTION CHAPTER 66

Assembly Concurrent Resolution No. 195—Relative to Motorcycle Awareness Month.

[Filed with Secretary of State May 29, 2002.]

WHEREAS, Motorcycle riding is a popular form of recreation and efficient transportation for more than 500,000 people in California; and

WHEREAS, The safety hazards created by automobile operators who have not been educated to watch for motorcyclists on the streets and highways of California are of prime concern to motorcyclists; and

WHEREAS, It is especially important that the citizens of California be aware of motorcycles on the streets and highways and recognize the importance of motorcycle safety; and

WHEREAS, American Brotherhood Aimed Toward Education (ABATE) of California is an organization that is actively promoting safe operation, increased rider training, and increased motorist awareness of motorcycles; and

WHEREAS, It is important to recognize the need for awareness on the part of all drivers, especially with regard to sharing the road with motorcycles, and in honor of motorcyclists' many contributions to the communities in which they live and ride; now, therefore, be it

Resolved by the Assembly of the State of California, the Senate thereof concurring, That May 2002 is Motorcycle Awareness Month and urges both motorcycle riders and automobile drivers to follow the rules of the road so that all citizens will remain safe.

RESOLUTION CHAPTER 67

Assembly Concurrent Resolution No. 199—Relative to National Public Works Week.

[Filed with Secretary of State May 29, 2002.]

WHEREAS, Decades ago, California built the world's finest education system and invested in infrastructure related to transportation, parks, water delivery, and water treatment facilities to build and maintain California's high quality of life; and

WHEREAS, California's infrastructure is the foundation upon which the state has built one of the world's largest economies; and

WHEREAS, Today, after decades of neglect, our schools, roads, ports, water and sewage treatment facilities, and other vital infrastructure are aging, overloaded, and unable to meet the growing demands placed on them; and

WHEREAS, California is at a critical juncture in determining the future viability of its physical infrastructure; and

WHEREAS, Only a renewed commitment to reinvest in California's public works will keep our obligation to future generations of Californians; and

WHEREAS, The week of May 19, 2002, to May 25, 2002, is National Public Works Week; now, therefore, be it

Resolved by the Assembly of the State of California, the Senate thereof concurring, That we, the Members of the California State Legislature, commit to pursuing flexible and fiscally prudent approaches to rebuild California's infrastructure in support of a vibrant economy and protective of the quality of life of all Californians; and be it further

Resolved, That we, the Members of the California State Legislature, recognize the work of groups such as the California Rebuild America Coalition (CalRAC) and its member organizations, which include the California chapters of the American Public Works Association, the California Business Roundtable, the League of California Cities, the California State Association of Counties, the Association of California Water Agencies, the American Society of Civil Engineers, the Engineering Contractors' Association, as well as a host of California cities, counties, special districts, corporations, and other organizations, such as the State Building and Construction Trades Council of California and the National Electrical Contractors Association, that strive to raise awareness of California's infrastructure requirements, and most importantly, to build support for dedicated and consistent funding for California's infrastructure facilities and systems; and be it further

Resolved, That the Chief Clerk of the Assembly transmit copies of this resolution to the author for appropriate distribution.

RESOLUTION CHAPTER 68

Assembly Concurrent Resolution No. 203—Relative to recognizing May 2002 as Asian and Pacific Islander American Heritage Month.

[Filed with Secretary of State May 29, 2002.]

WHEREAS, The earliest Asian Americans immigrated to the United States in the 1800's; and

WHEREAS, Asian and Pacific Islander Americans have played a critical role in the social, economic, and political development of California throughout its history; and

WHEREAS, The 4.22 million Asian and Pacific Islander Americans in California are one of the fastest growing ethnic populations in the state; and

WHEREAS, Asian and Pacific Islander Americans represent over 12 percent of California's population and represent ancestries that include Burmese, Cambodian, Chinese, East Indian, Filipino, Guamanian, Hawaiian, Hmong, Indonesian, Iu-Mien, Japanese, Korean, Laotian, Singaporean, Thai, Tongan, and Vietnamese; and

WHEREAS, Asian and Pacific Islander American entrepreneurs have led many of California's businesses to the pinnacle of their respective industries; and

WHEREAS, Asian and Pacific Islander American communities throughout California actively promote their cultural heritage and promote cross-cultural understanding; and

WHEREAS, Asian and Pacific Islander Americans will continue to be an important part of California's diverse tapestry of cultures and ideas; and

WHEREAS, Asian and Pacific Islander American immigrants have contributed greatly to California's economic success, rural growth, and urban development; and

WHEREAS, Asian and Pacific Islander American refugees have revitalized many of California's communities, while bringing in new ideas and economic opportunities; and

WHEREAS, Asian and Pacific Islander American immigrants and refugees had to overcome tremendous odds and cultural barriers to establish a better life for their families; and

WHEREAS, Asian and Pacific Islander Americans have a proud legacy of service and dedication to the State of California and to the United States of America; now, therefore, be it

Resolved by the Assembly of the State of California, the Senate thereof concurring, That the Legislature commends Asian and Pacific Islander Americans for their notable accomplishments and outstanding service to the State of California, and recognizes the month of May 2002 as Asian and Pacific Islander American Heritage Month; and be it further

Resolved, That the Chief Clerk of the Assembly transmit copies of this resolution to the author for appropriate distribution.

RESOLUTION CHAPTER 69

Senate Joint Resolution No. 37—Relative to Alzheimer's disease.

[Filed with Secretary of State May 30, 2002.]

WHEREAS, Four hundred seventy-two thousand Californians suffer from Alzheimer's disease; and

WHEREAS, We face an imminent epidemic unless we find a way to stop Alzheimer's because an estimated 1.4 million California baby boomers will have the disease within 50 years; and

WHEREAS, One in 10 persons over 65 years of age, and nearly one-half of those over 85 years of age have the disease and younger people also get the disease; and

WHEREAS, Without a way to prevent the Alzheimer's disease, it will continue to be costly, not just to families, but also to businesses and government; and

WHEREAS, Alzheimer's disease costs society $100 billion annually; and

WHEREAS, Alzheimer's disease costs businesses $33 billion annually, including $26 billion to lost productivity and absenteeism and $7 billion in health insurance and related costs for employees with Alzheimer's disease; and

WHEREAS, Alzheimer's disease may bankrupt the Medicare program because the costs to care for Medicare beneficiaries with Alzheimer's disease is 70 percent more than the cost to care for the average beneficiary; and

WHEREAS, Alzheimer's disease may bankrupt medicaid and state budgets as well because nearly one-half of Medicare beneficiaries who have Alzheimer's disease also receive medicaid; and

WHEREAS, Alzheimer's disease research needs and deserves a bigger investment; and

WHEREAS, The federal government is spending far less on Alzheimer's disease research than on other devastating diseases, such as the $3.7 billion spent on cancer research and $2.3 billion spent on heart disease; and

WHEREAS, To realize the benefits of recent progress in Alzheimer's disease research, we need a massive assault on Alzheimer's disease because Alzheimer's disease attacks the brain of its potential victims 20 years before symptoms appear; and

WHEREAS, To prevent 14 million American baby boomers from the death sentence of Alzheimer's disease, we have to find ways to stop the disease process now, and a $1 billion investment in research is our only hope; and

WHEREAS, The return on the federal government's investment in Alzheimer's disease research has been spectacular in that science has made progress that 10 years ago no one dreamed was possible; and

WHEREAS, Four drugs to treat early and middle stages of Alzheimer's disease are on the market, and more are in the pipeline; and

WHEREAS, Scientists have developed a vaccine that in mice appears to ward off and reduce the brain-clogging deposits of amyloid protein characteristic of Alzheimer's disease; and

WHEREAS, Research has produced evidence that commonly available products, including nonsteroid antiinflammatory drugs, vitamin E, and estrogen, may have a preventive effect on Alzheimer's disease; and

WHEREAS, Doctors are now able to diagnose Alzheimer's disease with a high degree of certainty; and

WHEREAS, Contradicting a long-held belief, several recent animal studies have suggested that the brain has regenerative power over new cells in the area of the brain associated with memory; now, therefore, be it

Resolved by the Senate and Assembly of the State of California, jointly, That an immediate investment in activities such as Alzheimer's disease clinical trials, research, awareness, and early detection could prevent 14 million American baby boomers from getting Alzheimer's disease; and be it further

Resolved, That the Legislature memorializes the President and Congress of the United States to enact legislation to do all of the following:

(1) Increase the number of large-scale clinical trials, which can cost as much as $15 to $20 million for one study because these trials take at least five years to produce results and we do not have time to conduct these trials one at a time.

(2) Fund a higher percentage of Alzheimer's disease research grants because the National Institute of Aging is funding only 24 percent of research applications it receives, which is down from 28 percent in 1999.

(3) Launch an initiative on dementia and vascular disease, which is a condition prevalent in certain minority populations and is the most common condition coexisting with Alzheimer's disease.

(4) Conduct further research on Alzheimer's disease risk factors to determine which individuals to target with prevention.

(5) Develop simple, practical, and affordable methods to detect early changes in the brain because improvements in diagnostic techniques are the only way that physicians will be able to identify who needs the treatment that will help alter the course of the disease while there is still enough time to make a difference; and be it further

Resolved, That the Secretary of the Senate transmit copies of this resolution to the President and Vice President of the United States, the Speaker of the House of Representatives, each Senator and Representative from California in the Congress of the United States, and the Secretary of Health and Human Services of the United States.

RESOLUTION CHAPTER 70

Senate Concurrent Resolution No. 43—Relative to the Deputy Sheriff Erik Jon Telen Memorial Highway.

[Filed with Secretary of State May 31, 2002.]

WHEREAS, Deputy Erik Jon Telen, of the Fresno County Sheriff's Department, was killed while in the line of duty, on August 21, 2001; and

WHEREAS, Deputy Erik Jon Telen was born in Clovis, California, to Don and Sharon Telen; and

WHEREAS, Deputy Erik Jon Telen attended the Fresno City Police Academy, where he excelled, receiving top of the class honors in 1997; and

WHEREAS, Upon graduating from the Fresno City Police Academy, Deputy Erik Jon Telen joined the Ontario, California, Police Department in August of 1997; and

WHEREAS, Deputy Erik Jon Telen, in the fall of 2000, returned home to his family in the Clovis area, where he joined the Fresno County Sheriff's Department; and

WHEREAS, Deputy Erik Jon Telen is survived by his wife, Shelley, his daughters, Bethany and Brooke, his son, Erik Jon Telen, Jr., his mother, Sharon Telen, and his brother Danny Telen; and

WHEREAS, Deputy Erik Jon Telen was mortally wounded when he was gunned down while protecting the public, on August 21, 2001; now, therefore, be it

Resolved by the Senate of the State of California, the Assembly thereof concurring, That the Legislature hereby dedicates that portion of State Highway Route 168 within the City of Clovis, California, from the Herndon Avenue Interchange to the Temperance Avenue Interchange, to the memory of Deputy Sheriff Erik Jon Telen; and be it further

Resolved, That State Highway Route 168 within the City of Clovis, California, from the Herndon Avenue Interchange to the Temperance Avenue Interchange be officially dedicated the "Deputy Sheriff Erik Jon Telen Memorial Highway;" and be it further

Resolved, That the Department of Transportation is requested to determine the cost of appropriate plaques and markers, consistent with signing requirements of the state highway system, showing this special designation, and upon receiving donations from nonstate sources sufficient to cover that cost, to erect those plaques and markers; and be it further

Resolved, That the Secretary of the Senate transmit copies of this resolution to the Department of Transportation and to the author for appropriate distribution.

RESOLUTION CHAPTER 71

Assembly Joint Resolution No. 8—Relative to the Choinumni Tribe.

[Filed with Secretary of State June 4, 2002.]

WHEREAS, The Choinumni Tribe of Yokuts is a sovereign Indian Nation, located in Fresno County, California, consisting of 103 enrolled and documented members, with its tribal headquarters located approximately 15 miles from Choinumni State Park named in honor of and as recognition of, the Choinumni Tribe; and

WHEREAS, The leaders of the Choinumni Tribe met with representatives of the United States for treaty negotiations, and a treaty was signed by both the tribal leaders and the United States on April 29, 1851 ; and

WHEREAS, The Choinumni Tribe was thus recognized by the United States government as early as 1851; and

WHEREAS, The Choinumni Tribe signed the treaty, on April 29, 1851, with four other Indian tribes, Picaynue Rancheria, Table Mountain Rancheria, Santa Rosa Rancheria, and Big Sandy Rancheria, all of whom are currently fully federally recognized Indian tribes; and

WHEREAS, The Choinumni Tribe is the only tribe to have signed this treaty that has not yet been granted full federal recognition; and

WHEREAS, Between 1851 and 1915, the United States government began an unwarranted, hostile relationship with the Choinumni Tribe that forced many of its members to flee into the hills; and

WHEREAS, Around 1887, the United States government granted individual land allotments to some tribal members, but those allotments were devoid of any water or other vital natural resources, forcing surviving tribal members to move to the City of Fresno to seek economic sustainability; and

WHEREAS, The Congress of the United States has recognized the Choinumni Tribe pursuant to subchapter XXV (commencing with Section 651) of Chapter 14 of Title 25 of the United States Code, which recognition was judicially affirmed by the United States Court of Claims in the case of Indians of California v. United States (1942) 98 Ct.Cl. 583; and

WHEREAS, Since the Choinumni Tribe is not listed as an Indian tribe eligible to receive federal programs set aside for Native American tribes, the Choinumni Tribe cannot participate in health, education, and social programs provided by the Bureau of Indian Affairs and the Indian Health Service; and

WHEREAS, The Choinumni Tribe has long been in a position of poverty that can only be corrected by federal recognition; and

WHEREAS, The Choinumni Tribe has been working since 1959 for federal recognition, including a 1987 application that is still pending; now, therefore, be it

Resolved by the Assembly and Senate of the State of California, jointly, That the Legislature respectfully memorializes the President and the Congress, and the Assistant Secretary for Indian Affairs in the United

States Department of the Interior to grant the Choinumni Tribe full federal recognition and all the rights and privileges that arise from that declaration, including listing the tribe in the Federal Register under the relevant provisions of the Federally Recognized Indian Tribe List Act of 1994 (Public Law 103-454), Title I; and be it further

Resolved, That the Chief Clerk of the Assembly transmit copies of this resolution to the President and Vice President of the United States, to each Senator and Representative from California in the Congress of the United States, and to the Assistant Secretary for Indian Affairs in the United States Department of the Interior.

RESOLUTION CHAPTER 72

Assembly Concurrent Resolution No. 74—Relative to National Scholarship Month.

[Filed with Secretary of State June 4, 2002.]

WHEREAS, A college-educated workforce is needed to maintain a strong and vibrant economy in California; and

WHEREAS, A major obstacle standing in the way of students who desire a college education is the steadily rising cost of college attendance, including tuition, books, fees, and living expenses; and

WHEREAS, Private scholarships provide an invaluable source of financial support for students, including those who might not otherwise be able to afford a college education; and

WHEREAS, It is appropriate to make efforts to inspire, motivate, and challenge people to make a difference for our youth by contributing to private scholarship funds; and

WHEREAS, National Scholarship Month, originated in 1998 by Citizens' Scholarship Foundation of America (CSFA), annually celebrates the current level of scholarship support received from the private sector; and

WHEREAS, National Scholarship Month calls for broader participation in supporting private scholarship funds and a renewed commitment in helping to make college more affordable; and

WHEREAS, The theme of this year's National Scholarship Month celebration is, ''Scholarships—Lighting the Future''; and

WHEREAS, National Scholarship Month provides hope for students of all ages and from all backgrounds to obtain the benefits of postsecondary education; now, therefore, be it

Resolved by the Assembly of the State of California, the Senate thereof concurring, That the Legislature recognizes May 2002, and each month of May thereafter, as National Scholarship Month; and be it further

Resolved, That the Legislature extends its gratitude to the private sector in California for its participation in scholarship funding, and encourages even greater participation in the future.

RESOLUTION CHAPTER 73

Assembly Concurrent Resolution No. 173—Relative to Osteoporosis Awareness Month.

[Filed with Secretary of State June 4, 2002.]

WHEREAS, Osteoporosis is a disease characterized by low bone mass, which often leads to fractures of the hip, spine, and wrist; and

WHEREAS, The World Health Organization has categorized osteoporosis as epidemic; and

WHEREAS, Osteoporosis affects both men and women, and 80 percent of people with osteoporosis are women and 20 percent are men; and

WHEREAS, Osteoporosis results in more than 1.5 million fractures of the hips, spines, and wrists of people in the United States each year; and

WHEREAS, These fractures can cause permanent disability, loss of independence, and even death; and

WHEREAS, Approximately five million Californians have osteoporosis, and another 1.5 million Californians have low bone mass, placing them at increased risk for developing osteoporosis; and

WHEREAS, It is expected that more than 8.5 million Californians will have, or be at risk for developing, osteoporosis by the year 2015; and

WHEREAS, Osteoporosis is the most common disease in women past menopause yet, according to a statewide survey in California in 1998, only one in four postmenopausal women are aware of their susceptibility to osteoporosis; and

WHEREAS, Osteoporosis usually progresses without any physical symptoms or pain until a fracture occurs; and

WHEREAS, Each year there will be more osteoporotic fractures in women than strokes, heart attacks, and cases of breast cancer combined; and

WHEREAS, Forty percent of women over the age of 50 years will develop an osteoporotic fracture, and one in eight men over the age of

50 years will experience an osteoporotic-related fracture in their lifetimes; and

WHEREAS, A woman's risk of hip fracture is higher than her combined risk of breast, uterine, and ovarian cancer, and of women who suffer hip fractures, 50 percent do not regain normal functioning, 20 percent die within six months after the fracture, and up to 25 percent will require long-term care; and

WHEREAS, By the year 2020, it is expected that the cost of diagnosing and treating people with osteoporosis will reach $62 billion in the United States; and

WHEREAS, People with osteoporosis are at high risk of developing problems with physical frailty and difficulties of daily living and may be at risk for reduced quality of life and financial status; and

WHEREAS, While there is no cure for osteoporosis, evidence shows that prevention, early diagnosis, and treatment are the keys to reducing the prevalence and debilitating effects of this disease; and

WHEREAS, Studies show that if people are aware that they have lower bone density, they do make lifestyle changes and can take advantage of available treatments; now, therefore, be it

Resolved by the Assembly of the State of California, the Senate thereof concurring, That the Legislature of the State of California recognizes May 2002 as Osteoporosis Awareness Month and urges all people in the state to become educated about their risks of developing osteoporosis, the methods of diagnosis of this disease, and the methods of treatment; and be it further

Resolved, That the Chief Clerk of the Assembly transmit copies of this resolution to the author for appropriate distribution.

RESOLUTION CHAPTER 74

Assembly Concurrent Resolution No. 183—Relative to Charter Schools Week.

[Filed with Secretary of State June 4, 2002.]

WHEREAS, Charter schools are public schools operating on the principles of accountability, flexibility, autonomy, and choice for parents and teachers; and

WHEREAS, Charter schools, in exchange for flexibility and autonomy, are held accountable by their sponsors for improving pupil achievement and for their financial and other operations; and

WHEREAS, Charter schools are in demand. There are over 350 charter schools in California serving 135,000 pupils in kindergarten and grades 1 to 12, inclusive; and

WHEREAS, Charter schools can tackle the problems of low academic performance and school overcrowding. Charter schools have already been proven successful with at-risk and low-performing pupils in urban areas; and

WHEREAS, Both Democrats and Republicans have embraced charter schools as an important option in the pursuit of improving our education system; now, therefore, be it

Resolved by the Assembly of the State of California, the Senate thereof concurring, That the Legislature hereby declares that the week of April 29 through May 3, 2002, be designated as Charter Schools Week; and be it further

Resolved, That the Chief Clerk of the Assembly transmit a copy of this resolution to the author for appropriate distribution.

RESOLUTION CHAPTER 75

Assembly Concurrent Resolution No. 192—Relative to Elder Abuse Prevention Month.

[Filed with Secretary of State June 4, 2002.]

WHEREAS, Older adults who are not able to live independently may be particularly vulnerable to mistreatment; and

WHEREAS, Elder abuse is prevalent in the United States with approximately one million cases occurring annually; and

WHEREAS, Cases of elder abuse reported to adult protective agencies has dramatically increased by 150 percent during the period of 1986 to 1996; now, therefore, be it

Resolved by the Assembly of the State of California, the Senate thereof concurring, That the Legislature declares May 2002 as Elder Abuse Prevention Month in California.

RESOLUTION CHAPTER 76

Assembly Concurrent Resolution No. 196—Relative to Memorial Day.

[Filed with Secretary of State June 4, 2002.]

WHEREAS, The preservation of basic freedoms and world peace has always been a valued objective of this great country; and

WHEREAS, Thousands of American men and women have selflessly given their lives in service as peacemakers and peacekeepers; and

WHEREAS, Greater strides should be made to demonstrate the appreciation and gratitude that these loyal Americans deserve and to commemorate the ultimate sacrifice that they have made; and

WHEREAS, Memorial Day should be a day where we actively remember our ancestors, our family members, our loved ones, our neighbors, and our friends who have given the ultimate sacrifice: by visiting cemeteries and placing flags or flowers on the graves of our fallen heroes, by visiting memorials, by flying the United States flag at half-staff until noon, by renewing a pledge to aid the widows, widowers, and orphans of our fallen dead; and

WHEREAS, Memorial Day is the day of the year for all Californians to appropriately remember American heroes by inviting the citizens of this state to respectfully honor them; and

WHEREAS, Memorial Day needs to be made relevant to both present and future generations of Americans; and

WHEREAS, A National Moment of Remembrance would provide citizens in California an opportunity to participate in a symbolic act of American unity; now, therefore, be it

Resolved by the Assembly of the State of California, the Senate thereof concurring, That May 27, 2002, shall be recognized as Memorial Day, and that the people of California are urged to honor the men and women of the United States who died in the pursuit of freedom and peace; and be it further

Resolved, That the Chief Clerk of the Assembly transmit copies of this resolution to the author's office for appropriate distribution.

RESOLUTION CHAPTER 77

Assembly Concurrent Resolution No. 206—Relative to National Military Appreciation Month.

[Filed with Secretary of State June 4, 2002.]

WHEREAS, On December 7, 2001, the 60th Anniversary of the attack on Pearl Harbor, Senator Max Cleland introduced new legislation (S. 1785) that ''urges the President to establish the White House Commission on National Military Appreciation Month'' to promote the observance of that month and other military commemorative events, to encourage participation through the establishment of the Spirit of

America Alliance, and to provide the necessary incentives for federal, state, and local governments and private sector entities to sponsor and participate in programs initiated by the commission. Among other things, S. 1785 found the following:

''(1) The vigilance of the United States Armed Forces, past and present, has been instrumental to the preservation of the freedom, security, and prosperity that the United States enjoys.

(2) The vigilance and capabilities of the United States Armed Forces depend on the dedicated service of its members, their families, and the civilian employees of the Department of Defense and United States Coast Guard.

(3) The role of the United States as a world leader, and the global scope that this role imparts to our Nation's interests, requires a military force that is well-trained, well-equipped, and appropriately sized.

(4) It is important for the relevance of the history and activities of the United States Armed Forces to be emphasized to current and future citizens of the United States through an annual National Military Appreciation Month that includes associated local and national observances and activities''; and

WHEREAS, On December 7, 1941, just before 8 a.m. on a Sunday morning, the first wave of bombers began the attack on Pearl Harbor that led the United States into World War II. It was an unforgettable day for those who lived through it, one which called America forth to defend itself, and in so doing, inspired a generation of Americans to rise and lead the defense of freedom around the world; and

WHEREAS, On September 11, 2001, America was attacked again, and for only the second time in modern history, American blood was shed on American soil by a foreign foe. Most of the casualties of this most recent attack were civilians, a reflection of the many ways in which the world has changed since 1941. Once again, a generation of Americans has been called to rise to the defense of our way of life-this time not against an aggressor nation but against the global terrorist networks that have targeted us; and

WHEREAS, The American military has been essential in responding to this latest attack; and

WHEREAS, As a nation, we cannot afford to forget the price of our freedom. Maintaining our military and our readiness is one of the keys to our freedom; and

WHEREAS, Through national, regional, and local activities National Military Appreciation Month recognizes our nation's military-active duty, National Guard and Reserve, retired veterans, and those who gave their lives for their country and the freedoms we all enjoy today; now, therefore, be it

Resolved by the Assembly of the State of California, the Senate thereof concurring, That the Legislature honors those men and women who have served and are serving in our nation's military, and recognizes the month of May 2002 as National Military Appreciation Month; and be it further

Resolved, That the Chief Clerk of the Assembly transmit copies of this resolution to the author for appropriate distribution.

RESOLUTION CHAPTER 78

Assembly Concurrent Resolution No. 207—Relative to Arthritis Awareness Month.

[Filed with Secretary of State June 4, 2002.]

WHEREAS, Arthritis includes more than 100 diseases and conditions affecting joints and connective tissues, such as osteoarthritis, rheumatoid arthritis, fibromyalgia, Lyme Disease, and gout; and

WHEREAS, Arthritis is the leading cause of disability in the United States, and is associated with poor physical health and poor mental health; and

WHEREAS, Californians incurred $23.3 billion in medical care for arthritis in 1997, and arthritis continues to cost California billions in medical expenses and lost wages each year; and

WHEREAS, An estimated 18 percent of Californians have arthritis; and

WHEREAS, A disproportionate number of older Californians, or an estimated 44 percent of adults over 65 years of age, are affected by arthritis; and

WHEREAS, Arthritis is not necessarily an inevitable part of the aging process; rather, effective methods exist to prevent, delay the onset of, and manage the symptoms of arthritis; now, therefore, be it

Resolved by the Assembly of the State of California, the Senate thereof concurring, That the Legislature hereby proclaims the month of May 2002 as Arthritis Awareness Month; and be it further

Resolved, That the Chief Clerk of the Assembly transmit copies of this resolution to the author for appropriate distribution.
